

## Lucie Hunter Fisher

(804) 229-4945 | [fisher.l24@law.wlu.edu](mailto:fisher.l24@law.wlu.edu) | 402 S Main St. Apt. 3,  
Lexington, VA 24450

### EDUCATION

#### **WASHINGTON & LEE UNIVERSITY SCHOOL OF LAW – Lexington, VA**

Candidate for J.D., May 2024

GPA: 3.604 (Top 30%)

- Lead Articles Editor, *W&L Law Review*
- 1L representative, *Executive Committee of the Student Body*
- 2L representative, *Executive Committee of the Student Body*
- 3L representative, *Executive Committee of the Student Body*
  - Elected position handling all student government and honor system matters.

#### **UNIVERSITY OF GEORGIA, Athens, GA**

B.A., *magna cum laude*, Philosophy, May 2021

- Study Abroad – Cannes, France (Cannes Lions International Festival of Creativity)
- Student Designer, *Fashion Design Student Association*

### EXPERIENCE

#### **BRADLEY, ARANT, BOULT & CUMMINGS LLP (Current Position)**

*Summer Associate*

Tampa, Florida

#### **WASHINGTON & LEE UNIVERSITY SCHOOL OF LAW (Spring 2022 – Summer 2023)**

*Research Assistant for Professor Christopher B. Seaman*

Lexington, Virginia

- Researched information regarding the Coca-Cola Company's trade secrets and their efforts taken to maintain secrecy.
- Wrote a memorandum summarizing relevant litigation, formula history, allegedly publicized recipes, and other information regarding Coke's trade secrets.
- Read and coded hundreds of NDAs for now-published data analysis of trade secret-related employment restrictions.

#### **VIRGINIA OFFICE OF THE ATTORNEY GENERAL (Summer 2022)**

*Summer Intern – Civil Litigation*

Richmond, Virginia

- Researched and wrote about state and federal civil legal issues, including Constitutional torts, Title 7 and 9 claims, and sovereign immunity.
- Drafted appearance letters and discovery motions.
- Researched intricate discovery and civil procedure issues and provided timely internal memoranda.

#### **GROW IT. KNOW IT. (Spring 2021 – Summer 2021)**

*Group Leader*

Athens, Georgia

- Created and led weekly Socratic group discussion with elementary school students.
- Focused discussion to further critical thinking skills while teaching basic philosophical principles.

### INTERESTS

- Sewing, cooking, basketball (especially NBA on TNT), reality television

Page: 1 of 2

Student: Lucie Hunter Fisher

Lexington, Virginia 24450-2116



SSN: XXX-XX-5466

Date of Birth: 03/16/XXXX

Entry Date: 08/30/2021

Academic Level: Law

**2021-2022 Law Fall**

08/30/2021 - 12/18/2021

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 109	CIVIL PROCEDURE	B+	4.00	4.00	13.32	
LAW 140	CONTRACTS	B+	4.00	4.00	13.32	
LAW 163	LEGAL RESEARCH	A-	0.50	0.50	1.84	
LAW 165	LEGAL WRITING I	A-	2.00	2.00	7.34	
LAW 190	TORTS	A-	4.00	4.00	14.68	

Term GPA: 3.482

Totals:

14.50

14.50

50.50

Cumulative GPA: 3.482

Totals:

14.50

14.50

50.50

**2021-2022 Law Spring**

01/10/2022 - 04/29/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 130	CONSTITUTIONAL LAW	A	4.00	4.00	16.00	
LAW 150	CRIMINAL LAW	A-	3.00	3.00	11.01	
LAW 163	LEGAL RESEARCH	B+	0.50	0.50	1.67	
LAW 166	LEGAL WRITING II	B+	2.00	2.00	6.66	
LAW 179	PROPERTY	A-	4.00	4.00	14.68	
LAW 195	TRANSNATIONAL LAW	B+	3.00	3.00	9.99	

Term GPA: 3.636

Totals:

16.50

16.50

60.00

Cumulative GPA: 3.564

Totals:

31.00

31.00

110.50

**2022-2023 Law Fall**

08/29/2022 - 12/19/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 663	Legal Method	P	1.00	1.00	0.00	
LAW 685	Evidence	A	3.00	3.00	12.00	
LAW 708	Financial Literacy For Lawyers	B	1.00	1.00	3.00	
LAW 715	Antitrust Law	A	3.00	3.00	12.00	
LAW 720	Intellectual Property	A-	3.00	3.00	11.01	
LAW 879	Entertainment Law Practicum	A	2.00	2.00	8.00	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	

Term GPA: 3.834

Totals:

15.00

15.00

46.01

Cumulative GPA: 3.639

Totals:

46.00

46.00

156.51

Page: 2 of 2

Student: Lucie Hunter Fisher

Lexington, Virginia 24450-2116

**2022-2023 Law Spring**

01/09/2023 - 04/28/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 690	Professional Responsibility	A-	3.00	3.00	11.01	
LAW 701	Administrative Law	B+	3.00	3.00	9.99	
LAW 725	Conflict of Laws	B+	3.00	3.00	9.99	
LAW 767	Electronic Discovery	B+	1.00	1.00	3.33	
LAW 828	Trial Advocacy Practicum	A-	3.00	3.00	11.01	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	

**Term GPA: 3.486****Totals:**

15.00

15.00

45.33

**Cumulative GPA: 3.604****Totals:**

61.00

61.00

201.84

**2023-2024 Law Fall**

08/28/2023 - 12/18/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 707L	Skills Immersion: Litigation		2.00	0.00	0.00	
LAW 713	Sales		3.00	0.00	0.00	
LAW 722	Mass Media Law		2.00	0.00	0.00	
LAW 817	Statutory Interpretation Practicum		4.00	0.00	0.00	
LAW 865	Negotiations and Conflict Resolution Practicum		2.00	0.00	0.00	

**Term GPA: 0.000****Totals:**

13.00

0.00

0.00

**Cumulative GPA: 3.604****Totals:**

61.00

61.00

201.84

Law Totals	Credit Att	Credit Earn	Cumulative GPA
Washington & Lee:	61.00	61.00	3.604
External:	0.00	0.00	
Overall:	61.00	61.00	3.604

**Program:** Law**End of Official Transcript**

Founded in 1749 as Augusta Academy, the University has been named, successively, Liberty Hall (1776), Liberty Hall Academy (1782), Washington Academy (1790), Washington College (1813), and The Washington and Lee University (1871). W&L has enjoyed continual accreditation by or membership in the following since the indicated year: The Commission on Colleges of the Southern Association of Colleges and Schools (1895); the Association of American Law Schools (1920); the American Bar Association Council on Legal Education (1923); the Association to Advance Collegiate Schools of Business (1927); the American Chemical Society (1941); the Accrediting Council for Education in Journalism and Mass Communications (1948), and Teacher Education Accreditation Council (2012).

The **basic unit of credit** for the College, the Williams School of Commerce, Economics and Politics, and the School of Law is equivalent to a semester hour.

The **undergraduate calendar** consists of three terms. From 1970-2009: 12 weeks, 12 weeks, and 6 weeks of instructional time, plus exams, from September to June. From 2009 to present: 12 weeks, 12 weeks, and 4 weeks, September to May.

The **law school calendar** consists of two 14-week semesters beginning in August and ending in May.

**Official transcripts**, printed on blue and white safety paper and bearing the University seal and the University Registrar's signature, are sent directly to individuals, schools or organizations upon the written request of the student or alumnus/a. Those issued directly to the individual involved are stamped "Issued to Student" in red ink. ***In accordance with The Family Educational Rights and Privacy Act of 1974, as amended, the information in this transcript is released on the condition that you permit no third-party access to it without the written consent from the individual whose record it is. If you cannot comply, please return this record.***

#### Undergraduate

**Degrees awarded:** Bachelor of Arts in the College (BA); Bachelor of Arts in the Williams School of Commerce, Economics and Politics (BAC); Bachelor of Science (BS); Bachelor of Science with Special Attainments in Commerce (BSC); and Bachelor of Science with Special Attainments in Chemistry (BCH).

Grade	Points	Description
A+	4.00	} Superior.
A	4.00	
A-	3.67	
B+	3.33	} Good.
B	3.00	
B-	2.67	
C+	2.33	} Fair.
C	2.00	
C-	1.67	
D+	1.33	} Marginal.
D	1.00	
D-	0.67	
E	0.00	Conditional failure. Assigned when the student's class average is passing and the final examination grade is F. Equivalent to F in all calculations
F	0.00	Unconditional failure.

#### Grades not used in calculations:

I	-	Incomplete. Work of the course not completed or final examination deferred for causes beyond the reasonable control of the student.
P	-	Pass. Completion of course taken Pass/Fail with grade of D- or higher.
S, U	-	Satisfactory/Unsatisfactory.
WIP	-	Work-in-Progress.
W, WP, WF	-	Withdrew, Withdrew Passing, Withdrew Failing. Indicate the student's work up to the time the course was dropped or the student withdrew.

#### Grade prefixes:

R	Indicates an undergraduate course subsequently repeated at W&L (e.g. RC-).
E	Indicates removal of conditional failure (e.g. ED = D). The grade is used in term and cumulative calculations as defined above.

#### Ungraded credit:

Advanced Placement: includes Advanced Placement Program, International Baccalaureate and departmental advanced standing credits.

Transfer Credit: credit taken elsewhere while not a W&L student or during approved study off campus.

#### Cumulative Adjustments:

Partial degree credit: Through 2003, students with two or more entrance units in a language received reduced degree credit when enrolled in elementary sequences of that language.

**Dean's List:** Full-time students with a fall or winter term GPA of at least 3.400 and a cumulative GPA of at least 2.000 and no individual grade below C (2.0). Prior to Fall 1995, the term GPA standard was 3.000.

**Honor Roll:** Full-time students with a fall or winter term GPA of 3.750. Prior to Fall 1995, the term GPA standard was 3.500.

**University Scholars:** This special academic program (1985-2012) consisted of one required special seminar each in the humanities, natural sciences and social sciences; and a thesis. All courses and thesis work contributed fully to degree requirements.

#### Law

**Degrees awarded:** Juris Doctor (JD) and Master of Laws (LLM)

Numerical	Letter	Grade*	Grade**	Points	Description
4.0	A			4.00	
	A-			3.67	
3.5				3.50	
	B+			3.33	
3.0	B			3.00	
	B-			2.67	
2.5				2.50	
	C+			2.33	
2.0	C			2.00	
	C-			1.67	
1.5				1.50	This grade eliminated after Class of 1990.
	D+			1.33	
1.0	D			1.00	A grade of D or higher in each required course is necessary for graduation.
	D-			0.67	Receipt of D- or F in a required course mandates repeating the course.
0.5				0.50	This grade eliminated after the Class of 1990.
0.0	F			0.00	Receipt of D- or F in a required course mandates repeating the course.

#### Grades not used in calculations:

-	WIP	-	Work-in-progress. Two-semester course.
I	I	-	Incomplete.
CR	CR	-	Credit-only activity.
P	P	-	Pass. Completion of graded course taken Pass/Not Passing with grade of 2.0 or C or higher. Completion of Pass/Not Passing course or Honors/Pass/Not Passing course with passing grade.
-	H	-	Honors. Top 20% in Honors/Pass/Not Passing courses.
F	-	-	Fail. Given for grade below 2.0 in graded course taken Pass/Fail.
-	NP	-	Not Passing. Given for grade below C in graded course taken Pass/Not Passing. Given for non-passing grade in Pass/Not Passing course or Honors/Pass/Not Passing course.

\* Numerical grades given in all courses until Spring 1997 and given in upperclass courses for the Classes of 1998 and 1999 during the 1997-98 academic year.

\*\* Letter grades given to the Class of 2000 beginning Fall 1997 and for all courses beginning Fall 1998.

#### Cumulative Adjustments:

Law transfer credits - Student's grade-point average is adjusted to reflect prior work at another institution after completing the first year of study at W&L.

**Course Numbering Update:** Effective Fall 2022, the Law course numbering scheme went from 100-400 level to 500-800 level.

Office of the University Registrar  
Washington and Lee University  
Lexington, Virginia 24450-2116  
phone: 540.458.8455  
email: registrar@wlu.edu

  
University Registrar

## How to Authenticate This Official PDF Transcript

This official PDF transcript has been transmitted electronically to the recipient, and is intended solely for use by that recipient. It is not permissible to replicate this document or forward it to any person or organization other than the identified recipient. Release of this record or disclosure of its contents to any third party without written consent of the record owner is prohibited.

This official transcript has been digitally signed and therefore contains special characteristics. This document will reveal a digital certificate that has been applied to the transcript, and for optimal results, we recommend that this document is viewed with the latest version of Adobe® Acrobat or Adobe® Reader. This digital certificate will appear in a pop-up screen or status bar on the document, display a blue ribbon, and declare that the document was certified by Parchment, with a valid certificate issued by GlobalSign CA for Adobe®. This document certification can be validated by clicking on the Signature Properties of the document.



**The Blue Ribbon Symbol:** The blue ribbon is your assurance that the digital certificate is valid, the document is authentic, and the contents of the transcript have not been altered.



**Invalid:** If the transcript does not display a valid certification and signature message, reject this transcript immediately. An invalid digital certificate display means either the digital signature is not authentic, or the document has been altered. The digital signature can also be revoked by the transcript office if there is cause, and digital signatures can expire. A document with an invalid digital signature display should be rejected.



**Author Unknown:** Lastly, one other possible message, Author Unknown, can have two possible meanings: The certificate is a self-signed certificate or has been issued by an unknown or untrusted certificate authority and therefore has not been trusted, or the revocation check could not complete. If you receive this message make sure you are properly connected to the internet. If you have a connection and you still cannot validate the digital certificate on-line, reject this document.

The current version of Adobe® Reader is free of charge, and available for immediate download at <http://www.adobe.com>.

**ABOUT PARCHMENT:** Parchment is an academic credential management company, specializing in delivery of official electronic credentials. As a trusted intermediary, all documents delivered via Parchment are verified and secure.

Learn more about Parchment at [www.parchment.com](http://www.parchment.com)





UNIVERSITY OF GEORGIA

OFFICE OF THE REGISTRAR  
ATHENS, GEORGIA 30602-6113

STUDENT ACADEMIC RECORD

THIS OFFICIAL TRANSCRIPT IS PRINTED ON SECURITY PAPER AND DOES NOT REQUIRE A RAISED SEAL

*Fiona Liken*  
FIONA LIKEN  
UNIVERSITY REGISTRAR

MONTH AND DAY OF BIRTH	STUDENT NAME
16-MAR	Lucie Hunter Fisher

DATE PRINTED	PAGE NO.	TRANSCRIPT CONTROL NUMBER
10-JAN-2022	1	DocumentID: 37413872

DEGREE OBJ.	COLLEGE OR SCHOOL	MAJOR
See program information below.		

ISSUED TO:	Lucie Fisher
------------	--------------

SPECIAL REQUIREMENTS	REGENTS EXAM		HISTORY	CONSTITUTION		PHYSICAL EDUCATION
	ESSAY	READING		FEDERAL	GA.	
→	OK	OK	OK	OK	OK	OK

Course Level: Non Credit

SUBJ NO.	COURSE TITLE		CRED GRD	PTS R
***** TRANSCRIPT TOTALS *****				
	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	0.00	0.00	0.00	0.00
TOTAL TRANSFER	0.00	0.00	0.00	0.00
OVERALL	0.00	0.00	0.00	0.00
***** END OF TRANSCRIPT *****				





## UNIVERSITY OF GEORGIA

OFFICE OF THE REGISTRAR  
ATHENS, GEORGIA 30602-6113

## STUDENT ACADEMIC RECORD

THIS OFFICIAL TRANSCRIPT IS PRINTED ON SECURITY PAPER AND DOES NOT REQUIRE A RAISED SEAL

*Fiona Liken*  
FIONA LIKEN  
UNIVERSITY REGISTRAR

MONTH AND DAY OF BIRTH <b>16-MAR</b>	STUDENT NAME <b>Lucie Hunter Fisher</b>	
DEGREE OBJ.	COLLEGE OR SCHOOL	MAJOR
See program information below.		
SPECIAL REQUIREMENTS ➔	REGENTS EXAM	HISTORY
	ESSAY OK	READING OK
	CONSTITUTION	PHYSICAL EDUCATION
	FEDERAL OK	GA. OK

DATE PRINTED <b>10-JAN-2022</b>	PAGE NO. <b>1</b>	TRANSCRIPT CONTROL NUMBER <b>DocumentID: 37413872</b>
ISSUED TO: <b>Lucie Fisher</b>		

Course Level: Undergraduate

## Program

Bachelor of Arts

College : College of Arts and Sciences

Major : Philosophy

Degrees Awarded Bachelor of Arts 14-MAY-2021

## Primary Degree

College : College of Arts and Sciences

Major : Philosophy

Inst. Honors: Magna Cum Laude

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:			
Summer 2017 U Mississippi			
POLS 1101	American Government	3.00 A	
UNIV 1TXX	Transfer Elective	3.00 A	
Ehrs: 6.00	GPA-Hrs: 6.00	QPts: 24.00	GPA: 4.00
Fall 2017 U Mississippi			
ASTR 1020	Stel And Galac Astro	3.00 B+	
ENGL 1101	English Comp I	3.00 A-	
HIST 2111	Am History to 1865	3.00 A	
MATH 1TXX	Transfer Elective	3.00 B	
THEA 2000	Apprec Of Dram Art	3.00 A	
Ehrs: 15.00	GPA-Hrs: 15.00	QPts: 54.00	GPA: 3.60
Spring 2018 U Mississippi			
BIOL 1103	Concepts In Biology	3.00 A	
BIOL 1103L	Concepts In Bio Lab	1.00 A	
CSCI 1100	Topics in Computing	3.00 A-	
ENGL 1102	English Comp II	3.00 A-	
MARK 1TXX	Transfer Elective	3.00 B	
Ehrs: 13.00	GPA-Hrs: 13.00	QPts: 47.20	GPA: 3.63
Summer 2018 U Mississippi			
HIST 1GXX	Gen Ed Core Elective	3.00 A	
STAT 2000	Intro Statistics	3.00 A	
***** CONTINUED ON NEXT COLUMN *****			

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Transfer Information continued:			
Ehrs: 6.00	GPA-Hrs: 6.00	QPts: 24.00	GPA: 4.00
Fall 2018 U Mississippi			
FREN 1001	Elementary French	4.00 A	
FREN 1GXX	Gen Ed Core Elective	2.00 A	
JRMC 1TXX	Transfer Elective	3.00 B	
PHIL 2010	Intro To Philosophy	3.00 A	
Ehrs: 12.00	GPA-Hrs: 12.00	QPts: 45.00	GPA: 3.75
Summer 2019 Dept Placement Exam			
MATH 1101	Intro Math Modeling	0.00 EX	
Ehrs: 0.00	GPA-Hrs: 0.00	QPts: 0.00	GPA: 0.00
INSTITUTION CREDIT:			
Spring 2019			
FREN 1110	Accelerated Elementary French	4.00 A-	14.80
LEGL 2700	Legal Regulatory Environ Bus	3.00 A	12.00
PHIL 2020	Logic and Critical Thinking	3.00 A	12.00
PHIL 2030	Introduction to Ethics	3.00 A	12.00
Ehrs: 13.00	GPA-Hrs: 13.00	QPts: 50.80	GPA: 3.90
Good Standing			
Summer 2019			
ADPR 5992	AD/PR Study Abroad	3.00 A	12.00 I
Study Abroad - Cannes, France			
ADPR 5992	AD/PR Study Abroad	3.00 A	12.00 I
Study Abroad - Cannes, France			
Ehrs: 6.00	GPA-Hrs: 6.00	QPts: 24.00	GPA: 4.00
Good Standing			
Fall 2019			
ENGL 3410	Literature and Media	3.00 A-	11.10
FREN 2001	Intermediate French	3.00 B+	9.90
PHIL 2500	Symbolic Logic	3.00 A	12.00
***** CONTINUED ON PAGE 2 *****			



## UNIVERSITY OF GEORGIA

OFFICE OF THE REGISTRAR  
ATHENS, GEORGIA 30602-6113

## STUDENT ACADEMIC RECORD

THIS OFFICIAL TRANSCRIPT IS PRINTED ON SECURITY PAPER AND DOES NOT REQUIRE A RAISED SEAL

*Fiona Liken*  
FIONA LIKEN  
UNIVERSITY REGISTRAR

MONTH AND DAY OF BIRTH	STUDENT NAME		DATE PRINTED	PAGE NO.	TRANSCRIPT CONTROL NUMBER
16-MAR	Lucie Hunter Fisher		10-JAN-2022	2	DocumentID: 37413872
DEGREE OBJ.	COLLEGE OR SCHOOL	MAJOR	ISSUED TO:		
See program information below.					
SPECIAL REQUIREMENTS ➔	REGENTS EXAM		HISTORY	CONSTITUTION	
	ESSAY	READING		FEDERAL	GA.
	OK	OK	OK	OK	OK
			PHYSICAL EDUCATION		
			OK		

SUBJ NO.	COURSE TITLE	CRED	GRD	PTS	R
Institution Information continued:					
PHIL 3000	Ancient Western Philosophy	3.00	A	12.00	
PHIL 3030	Existentialism	3.00	A	12.00	
Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 57.00 GPA: 3.80					
Dean's List					
Good Standing					
Spring 2020					
JURI 2500	Law and Connective Technology	3.00	A	12.00	
PEDB 1950	FFL Walking	1.00	S	0.00	
PHIL 3010	Modern Western Philosophy	3.00	A	12.00	
PHIL 4210	Social Political Philosophy	3.00	A-	11.10	
SOCI 1101	Intro Sociology	3.00	A	12.00	
Ehrs: 13.00 GPA-Hrs: 12.00 QPts: 47.10 GPA: 3.92					
Good Standing					
Fall 2020					
COMM 4800	Intercultural Communication	3.00	A-	11.10	
JURI 2600	Legal Aspects of Entrepreneurs	3.00	A	12.00	
PHIL 3230	Ethics of Food	3.00	A	12.00	
PHIL 4310	Philosophy of Mind	3.00	B+	9.90	
Ehrs: 12.00 GPA-Hrs: 12.00 QPts: 45.00 GPA: 3.75					
Good Standing					
Spring 2021					
PHIL 3300	Philosophy of Sports and Games	3.00	A	12.00	
PHIL 3900S	Philosophy for Children	3.00	A	12.00	
POLS 4105	Amer Pol Develop	3.00	A-	11.10	
POLS 4650	State Politics	3.00	A	12.00	
POLS 4700	Const Law Powers	3.00	A	12.00	
Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 59.10 GPA: 3.94					
Dean's List					
Good Standing					
***** CONTINUED ON NEXT COLUMN *****					

***** TRANSCRIPT TOTALS *****				
	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	74.00	73.00	283.00	3.87
TOTAL TRANSFER	52.00	52.00	194.20	3.73
OVERALL	126.00	125.00	477.20	3.81
***** END OF TRANSCRIPT *****				



## UNIVERSITY OF GEORGIA

### Office of the Registrar

### Transcript Guide

#### Accreditation

The University of Georgia is accredited by the Southern Association of Colleges and Schools Commission on Colleges to award baccalaureate, master's, specialist, and doctoral degrees. Contact the Southern Association of Colleges and Schools Commission on Colleges at 1866 Southern Lane, Decatur, GA 30033-4097 or call 404-679-4500 for questions about the accreditation of the University of Georgia. In addition, many UGA programs are specifically accredited by appropriate professional certifying agencies.

#### Course Numbering

Semester	Quarter	
0001-0999	001-099	Non-Credit, Academic Enhancement
1000-2999	100-299	Undergraduate, Lower Division
3000-5999	300-599	Undergraduate, Upper Division
6000-9999	600-999	Graduate

Professional courses may include course numbers 3000 and above.

#### Repeat Course Code Definitions

- A Included in GPA and attempted credit hours
- E Excluded from GPA, attempted, and earned credit hours
- I Included in GPA, attempted, and earned credit hours

#### Course Suffixes

- D - Non-Credit Discussion Group
- E - Online Learning Course
- H - Honors Course
- I - Integrated Learning Course
- L - Laboratory Course
- S - Service Learning Course
- W - Writing Intensive Course

#### Grading Scales

Effective summer 2006, the University of Georgia uses a plus/minus grading scale.

Grades	Quality Points per Credit Hour
A	4.0
A-	3.7
B+	3.3
B	3.0
B-	2.7
C+	2.3
C	2.0
C-	1.7
D	1.0
F	0.0

From fall 1969 to spring 2006, the University did not use a plus/minus grading scale.

#### School of Law Grading Scale

Grades	Quality Points per Credit Hour
A+	4.3
A	4.0
A-	3.7
B+	3.3
B	3.0
B-	2.7
C+	2.3
C	2.0
C-	1.7
D+	1.3
D	1.0
F	0.0

#### Other Grading Marks

- AU Audit prior to summer 1976.
- I Incomplete for A-F graded course: Doing satisfactory work but unable to complete course by deadline for reason beyond student's control.
- I\* Incomplete for Satisfactory/Unsatisfactory graded course: Doing satisfactory work but unable to complete course by deadline for reason beyond student's control.
- K Credit by examination effective summer 1976.
- NG No grade reported by instructor at the time of grade processing effective fall 2014.
- NR No grade reported by instructor at the time of grade processing prior to fall 2014.
- S Satisfactory in a Satisfactory/Unsatisfactory graded course.
- U Unsatisfactory in a Satisfactory/Unsatisfactory graded course.
- V Audit effective summer 1976.
- W Withdrawn: Permitted to withdraw from a course without academic penalty. In effect prior to fall 2008 and after fall 2014.
- WF Withdrawn/Failing: Counts as an F in the GPA. Prior to fall 2008: Unsatisfactory work at the time of withdrawal. Effective fall 2008 through summer 2014: Unsatisfactory work at the time of withdrawal or exceeded maximum limit of four W or WP grades.
- WM Military Withdrawal: Involuntary activation.
- WP Withdrawn/Passing: Permitted to withdraw from a course without academic penalty. In effect fall 2008 through summer 2014.
- WU Withdrawn/Unsatisfactory from a Satisfactory/Unsatisfactory graded course.

#### Attempted Courses Policy

All courses attempted by a student will be included on the student's transcript, including UGA courses from which the student withdrew and received no hourly credit and courses transferred to the University from another accredited institution.

#### Re-Enrollment Policy

A student is academically eligible to re-enroll at the University unless otherwise noted on the student's transcript.

#### Academic Calendar

As of fall 1998, the University of Georgia defines an academic year as comprised of three semesters: fall, spring, and summer. Prior to fall 1998, the University of Georgia operated on the quarter system.

#### For Additional Information, Contact:

Office of the Registrar  
University of Georgia (FICE Code: 001598)  
Holmes/Hunter Academic Building  
Athens, GA 30602-6113  
Phone: 706-542-4040  
Office of the Registrar Website: [www.reg.uga.edu](http://www.reg.uga.edu)  
University of Georgia Website: [www.uga.edu](http://www.uga.edu)

In accordance with U.S.C. 438 (6) (4) (8) (The Family Educational Rights and Privacy Act of 1974), you are hereby notified that this information is provided upon the condition that you, your agents, or employees will not permit any other party access to this record without consent of the student. Alteration of this transcript may be a criminal offense (Rooker, et, al, 2012, p. 133.).

Transcript guide modified November 2018.

**To Test for Authenticity of Official Paper Transcript:** The face of this document has a red background and the seal of the institution appears in small print. When photocopied in color or black and white, the word COPY appears prominently across the face of the entire document.  
**Alteration or forgery of this document may be a criminal offense.** A black and white document is not an original and should not be accepted as an official institutional document.

**To Test for Authenticity of PDF Transcript:** The electronic version of the official transcript of the University of Georgia contains a digital signature that can be instantly validated. The document will display a blue ribbon symbol as assurance that the digital signature is valid, authentic, and the contents of the document have not been altered. If you have additional questions about this document, please contact the Office of the Registrar at 706-542-4040.



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*

**Jason S. Miyares**  
Attorney General

202 North 9th Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120

March 6, 2023

To Whom It May Concern:

I am writing to recommend Lucie Fisher. I had the privilege of working with Lucie this past summer when she was an intern for the Office of the Attorney General of Virginia in the Trial Division, General Civil Litigation Unit. During her summer internship, Lucie impressed me with her detail-oriented eye for editing legal writing, ensuring that when she reviewed my written pleadings, the result was polished, clear, concise, and letter-perfect with every comma in its place. She quickly progressed beyond merely reviewing for Bluebook formatting into true collaboration to make the finished work a more incisive piece of written advocacy.

She had a facility for balancing priorities even when working for multiple attorneys on multiple cases. She managed to hit internal deadlines and constantly rebalance her workload without causing offense or letting lower priority projects fall by the wayside for tasks that were more urgent or interesting. I found her to be competent and confident without being brash or dismissive. This balancing act is rare in someone so young and early in her career.

Although Lucie was only a rising 2L when she interned at the OAG, she was able to apply complex Constitutional Law concepts to real world cases. Even without having had Evidence class, she was quick to learn to spot and analyze potential evidentiary issues as well. She showed intellectual and emotional commitment to her case assignments. I believe this passion and intellectual rigor particularly for constitutional questions will make her an asset in positions where she will be called upon to analyze complicated legal questions and she will only grow in this regard as she progresses in her education and experience.

Please do not hesitate to reach out if I may offer additional insights. My email address is [emcneill@oag.state.va.us](mailto:emcneill@oag.state.va.us) and my office number is 804-692-0598.

With deep respect,

*Erin McNeill*

Erin McNeill

WASHINGTON AND LEE UNIVERSITY  
SCHOOL OF LAW  
LEXINGTON, VA 24450

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to offer my strongest possible support for Lucie Fisher's application for a clerkship in your chambers. Lucie is a superb student, an excellent researcher and writer, and a leader in her class and community. She has a powerhouse intellect and the work ethic to match. She comes with both academic research experience from my colleague, Chris Seaman, and practical research and writing experience with the Virginia Attorney General's Office. She will make a truly extraordinary clerk.

I learned to know Lucie in my first-year Property course, and was struck with her powerful and incisive analysis. Lucie was a thought leader. She put in more work than the students around her, and it showed. Lucie would often introduce a theme and the other students would pick up on it and follow it. This was consistent with both the strength of Lucie's analysis and her leadership. She has been elected to the prestigious Executive Committee for three years running, and has been trusted with handling high-stakes matters as part of the University honor system. On the analysis front, Lucie's legal thinking is grounded and precise. I learned to trust her research and writing in greater depth when I served as her Law Review note advisor. In fact, I so trust her legal research skills that when I was up against a deadline I asked my research assistants to ask whether Lucie might be willing to help rescue the project. She did absolutely superb work in an extremely constrained timeframe.

On a personal note, Lucie is detail oriented, kind, and brilliant. She is a true pleasure to work with. She handles complex research with independence and inspiration. Please do not hesitate to contact me via email at [fairfieldj@wlu.edu](mailto:fairfieldj@wlu.edu), or on my personal cell at 540.490.0457, if I can advance her candidacy in any way.

Warmest regards,

Joshua Fairfield  
William Bain Family Professor of Law

Joshua Fairfield - [fairfieldj@wlu.edu](mailto:fairfieldj@wlu.edu) - 540-458-8529

**CHRISTOPHER BERNHARDT**

1222 Stanhope Ave., Richmond, VA 23227 • (937) 750-7766 • [chrisbernhardt@gmail.com](mailto:chrisbernhardt@gmail.com)

---

**RE: Recommendation - Lucie Hunter Fisher**

With great pleasure, I am writing to recommend Lucie Fisher for a term clerkship. I have been a civil litigation attorney in Virginia since 2010, including seven years as a managing and staff attorney with Central Virginia Legal Aid Society and two years as a pro bono fellow with Hunton & Williams. In 2021, I joined the Civil Trial Unit at the Office of the Attorney General of Virginia as an Assistant Attorney General. In all of these positions, I have supervised and mentored several law students a year.

In the summer of 2022, Lucie interned in the Trial Section of the Office of the Attorney General where I was her supervisor. Even though she had just finished her 1L year, Lucie distinguished herself with the quality of her writing and legal research.

Notably, the quality of Lucie's written work, which started from a high baseline, improved significantly over the course of the summer as she received and incorporated feedback. In one instance, I suggested Lucie add more headings and organizational structure to help the reader follow her well written analysis. She immediately adopted the suggestion and going forward her memorandums, and even emails, had smart and fitting organizational headings. Lucie is also a skilled editor. By the end of her internship, she was confident enough to provide me with helpful substantive edits to my briefs.

Lucie's legal research skills also set her apart. She not only avoided common law student mistakes, such as superficial research and not looking up relevant statutes, she was able to work quickly on a deadline. On one occasion, another attorney asked Lucie to research the due process concerns raised by a particular government action and provided only limited background. Only a few hours later, Lucie had produced a thorough, but concise, memorandum that identified and summarized the relevant statutory and constitutional provisions, helpful secondary sources, and case law, and provided her well-reasoned, and correct, conclusions.

This recommendation is without any reservations. Of all the law students I have supervised, Lucie was the best writer and researcher. She has the drive and ability to improve these skills, which foretells that she would be an excellent clerk. In addition to being professional and hardworking, she is very easy to work with.

Do not hesitate to contact me if you have any questions about Lucie or this letter.

Sincerely,

*Christopher Bernhardt*

## Lucie H. Fisher

(804) 229-4945 | fisher.l24@law.wlu.edu  
402 S Main St. Apt. 3, Lexington, VA 24450

---

This memo was produced during my first-year writing class; it focuses on whether, under Tennessee common law, a sibling that financially or otherwise supports the needs of another sibling is considered the “head of household” under the family purpose doctrine. The family purpose doctrine holds parents or other legal guardians liable for accidents caused by any family member with permission to use the “family vehicle.” Within this memo I analyze whether our fictional client’s support of her brother fails to satisfy the plaintiff’s requirements for recovery under the family purpose doctrine and thus whether our client is likely to be awarded summary judgment.

**MEMORANDUM**

To: Supervising Attorney

From: Lucie Fisher

Date: November 16, 2021

Re: Lopez Case – Family Purpose Doctrine

---

**ISSUE STATEMENT**

Under Tennessee law will a court grant summary judgement for Alex Lopez on a family purpose doctrine claim when her brother, Carl Lopez, for whom she is not a legal guardian, took her car without her knowledge and got into an accident?

**BRIEF ANSWER**

A Tennessee state court will likely grant summary judgment to remove Alex from the case because it will likely find that the family purpose doctrine is inapplicable to Alex Lopez. The family purpose doctrine applies when a head of household owns a vehicle for family purposes and gives a family member express or implied permission to use the vehicle at the time of the accident. The family purpose doctrine is likely inapplicable to Alex since: (1) she is not under any legal obligation to provide for Carl; and (2) her permission was sometimes required for Carl to use the vehicle. Thus, a court will likely grant summary judgment.

**FACTS**

Our clients, siblings Alex Lopez and Carl Lopez, are being sued in a personal injury suit brought by Randy Jones following a car crash involving Carl; Alex was not involved in the accident but is alleged liable under Tennessee's family purpose doctrine. Carl is 17 and lives full-time in Virginia with his sister Alex, age 28. Their mother died over 10 years ago;



three years ago, their father moved to New York and left Alex and Carl to continue living in the family home.

Alex is not Carl's legal guardian. She will not sign any legal documents for Carl and sends them to their father. Their father will sometimes send checks to help support them, but Alex is Carl's primary source of financial support. While their father has Carl's medical records, Carl is on Alex's health insurance through her work. Alex pays their home's utilities, repairs, and insurance bills.

Around the time their father moved out of state, Alex purchased a Toyota Camry out of necessity. Carl was not of driving age when she purchased the car. Alex needed a vehicle to get to work, go to the grocery store, and run other errands to support the home.

Since he reached driving age, Carl will sometimes drive Alex's car. He knows where the keys are, but he has never taken the car without Alex's permission. Carl has Alex's permission, while she is at work, to use the car for groceries or to go to school without asking. Carl must ask for Alex's permission each time to use the car for recreation or pleasure; she usually denies him this permission, but she has at least once to go to the movies. Alex has denied Carl permission to use the vehicle previously for out-of-state trips.

In August 2021, Alex was out of town for work and Carl took the car to go on a road trip to Pigeon Forge, Tennessee with a friend to visit Dollywood. Carl neither informed Alex he took the car to Tennessee, nor did he ask for Alex's permission to use the vehicle.

Carl became tired as he drove through Tennessee. The plaintiff, Randy Jones, alleges that Carl crossed the center line while turning a curve and hit Mr. Jones's truck. The accident seriously injured Mr. Jones and he spent several weeks in the hospital; Carl and his friend were not seriously injured. The Complaint names both Alex and Carl as defendants. Carl is alleged responsible for his negligent driving of the vehicle. Alex is alleged as vicariously liable for the accident under Tennessee's family purpose doctrine.

### DISCUSSION

A Tennessee state court will not likely find the family purpose doctrine applicable to Alex Lopez and will likely grant summary judgment to remove her from the case.

Tennessee’s family purpose doctrine is a court-created legal fiction that imposes vicarious liability on a vehicle owner for the negligent driving of a family member. *See Starr v. Hill*, 353 S.W.3d 478, 482 (Tenn. 2011). The family purpose doctrine is applicable when (1) a vehicle owner is the “head of household” (2) the vehicle is owned, maintained, and provided for family purposes; (3) the vehicle was used at the time of the accident in furtherance of a family purpose; and (4) the vehicle was used at the time of the accident with the owner’s express or implied permission. *See id.* at 480.

A court grants summary judgment “only when the facts and the reasonable inferences from those facts would permit a reasonable person to reach only one conclusion.” *Id.* at 481. Alex is not Carl’s legal guardian and she restricted Carl’s recreational use of the vehicle. A reasonable person is only likely to conclude that Alex is neither the head of household nor permitted Carl to use the vehicle at the time of the accident. Thus, a court is likely to fail to find that the elements of the family purpose doctrine are here satisfied.

#### **(1) Alex Lopez is Likely Not the Head of Household**

Alex Lopez is likely not the head of household because she had no legal duty and no assumed duty to support her brother, Carl. Whether a vehicle owner is the head of household depends on the owner’s family relationship with the driver and the owner’s duty to support the driver. *See id.* at 486. Tennessee state courts regularly consider parents to be heads of households, as they are under legal obligations to support their children. *See id.* at 485–87. Tennessee state courts are hesitant to equate legal obligation with assumed obligation for the purposes of the family purpose doctrine. *See Daniels v. Huffaker*, No. E2014-00869-COA-R3-CV, 2015 Tenn. App. LEXIS 315, at \*23 (Tenn. Ct. App. May 12,

2015) (remaining conscious of the modern family's changing nature while hesitating to equate a generous brother-in-law with another under legitimate legal obligation).

A parent in Tennessee has a legal duty to support their child. *See Starr*, 353 S.W.3d at 486–87. In *Starr*, a father, the vehicle owner, had a legal obligation under his divorce decree to make monthly child support payments. *See id.* Tennessee's code imposes a legal duty on a parent to support their children. *See id.* Since the father had a statutory duty to support his son and had a legal obligation via divorce decree to make child support payments, the court found he had a legal duty to support his son. *See id.* Thus, the court concluded that the father was the head of household. *See id.*

Generously supporting the needs of a family member does not automatically assume a legal obligation to support that family member under the family purpose doctrine. *See Daniels*, 2015 Tenn. App. LEXIS 315, at \*23. In *Daniels*, the vehicle owner, a brother-in-law, supported the driver, his sister-in-law, with shelter and possibly other necessities. *See id.* at \*23. Despite this support, the brother-in-law's lack of legal obligation still governed the court finding that he could not be considered the head of household. *See id.* at \*23–24.

Alex Lopez lacks any legal obligation to support Carl like the father in *Starr*'s legal obligation to support his son. *See Starr*, 353 S.W.3d at 486–87. The father in *Starr* had a legal duty to support his son because Tennessee's code imposes a duty on parents to support their children and his legally obligated child support payments. *See id.* Unlike the father in *Starr*, Alex has no legal duty to support her brother because she is not Carl's legal guardian and is not legally obligated to financially support Carl. Alex generously supports Carl because she desires to, not because she is legally obligated to. Based on Alex's lack of a legal duty to support Carl, a court should not consider her the head of household.

Alex supported Carl because she generously desired to, like the brother-in-law did in *Daniels*. Here, and in *Daniels*, a non-parent family member supported another family member with shelter and possibly other necessities. *See Daniels*, 2015 Tenn. App. LEXIS 315, at \*23. In *Daniels*, a brother-in-law supported his sister-in-law by sheltering her. *See id.* Similarly, in our case, Alex supported her brother, Carl, by providing him shelter-related expenses, such as utilities and insurance bills. As the court in *Daniels* declined to extend to the brother-in-law an assumed duty to support his sister-in-law, a court will likely decline to extend to Alex an assumed duty to support Carl. *See id.*

Since a court will likely find that Alex has no legal duty to support Carl, a court will likely conclude that she is not the head of household. Thus, summary judgment for Alex Lopez will likely be granted.

**(2) Alex Lopez Probably Owned, Maintained, and Provided the Vehicle  
for Family Purposes**

A Tennessee state court will probably find that Alex Lopez owned, maintained, and provided a vehicle for family purposes. Tennessee state courts seem to favor a broad interpretation of what uses are considered family purpose uses. *See Corbin v. Morgan*, No. 136, 1986 Tenn. App. LEXIS 3449, at \*2 (Tenn. Ct. App. Dec. 12, 1986). To determine if a head of household's vehicle is for family purposes, Tennessee courts look at whether it is maintained wholly or partly to serve the pleasure, convenience, or benefit of the family. *See id.* at \*2. Providing and maintaining a vehicle for a family member's transportation or other needs are usually considered for family purposes, but a vehicle provided and maintained for business operation may not. *See Redding v. Barker*, 230 S.W.2d 202, 205 (Tenn. Ct. App. 1950).

Owning, maintaining, and providing a car for the family's needs is considered for family purposes. *See Corbin*, 1986 Tenn. App. LEXIS 3449, at \*2. In *Corbin*, the father testified that he made his car available for whatever needs the family may have had. *See id.* at \*2. The court concluded this testimony sufficient to find that the father owned, maintained, and provided the vehicle for family purposes. *See id.* at \*3–4.

The operation of the owner's business is not considered family purposes, even if otherwise used for family purposes. *See Redding*, 230 S.W.2d at 205. In *Redding*, the father, a farmer, owned and maintained a vehicle for his farm's operation but occasionally provided the vehicle for his son's pleasure. *See id.* Since the father primarily owned, maintained, and provided the vehicle for the farm's operation, the court found that the father did not own, maintain, and provide this vehicle for family purposes. *See id.*

Like the court in *Corbin*, a court will probably conclude that Alex owned, maintained, and provided her vehicle for family purposes. The statements Alex gave about her car's use are like the father's testimony in *Corbin*. In *Corbin*, a father testified that he made the car available to be used for whatever needs his family had. *See Corbin*, 1986 Tenn. App. LEXIS 3449, at \*2. Like the testimony in *Corbin*, Alex said that she made the car available for their household's needs. Like the court in *Corbin* found that the father provided the car for family purposes because of the father's testimony, a court should also find that Alex provided her car for family purposes because of her statements. *See id.* at \*3–4.

The purposes for which Alex owned, maintained, and provided her vehicle are distinguishable from those in *Redding*. The father in *Redding* proved he did not own, maintain, or provide his vehicle for family purposes because he primarily used it for his farm's operation. *See Redding*, 230 S.W.2d at 205. Unlike *Redding*, Alex stated that she

used her vehicle *to get to* her place of business and not *for* her business. Based on the difference in purpose in using a vehicle *to get to* work and using a vehicle *for* work, a court should find that Alex owned, maintained, and provided a vehicle for family purposes. Thus, this finding will lean against granting summary judgment to remove Alex.

### **(3) Carl Lopez Probably Used the Vehicle in Furtherance of a Family**

#### **Purpose at the Time of the Accident**

A court will probably find that Carl Lopez used Alex's vehicle in furtherance of a family purpose at the time of the accident. To further family purposes, the vehicle can be used for one family member's pleasure, convenience, or benefit. *See Gray v. Amos*, 869 S.W.2d 925, 928 (Tenn. Ct. App. 1993). Using the vehicle for one family member's pleasure furthers the pleasure of the family unit. *See Starr*, 353 S.W.3d at 487.

Using a vehicle for one's own pleasure furthers a family purpose. In *Gray*, the driver's father owned the vehicle for family purposes and the driver skipped school with his friends on the day of the accident; no evidence was presented of the driver's intended destination at the time of the accident. 869 S.W.2d at 928. While the father may not have liked that his son skipped school, the court found that since he skipped school, he used the vehicle for his own pleasure. *See Gray*, 869 S.W.2d at 928. One family member's pleasure furthers the family's pleasure, so the court found that the son's use of the vehicle for his own pleasure was in furtherance of family purposes. *See id.*

Like *Gray*, a court will probably find that Carl Lopez used Alex's car in furtherance of a family purpose. His use is like the driver's use in *Gray*. Here, and in *Gray*, the driver used the vehicle at the time of the accident for his own pleasure. *See id.* In *Gray*, the driver skipped school, no evidence was presented of the driver's intended destination, and the court found he used the vehicle to further his own pleasure. *See id.* Our case has evidence of



Carl's intended destination: Dollywood, an amusement park. Therefore, here, as in *Gray*, a court should find that going to Dollywood furthered Carl's own pleasure. Thus, like the court in *Gray*, a court will probably find that Carl used the vehicle in furtherance of a family purpose. This finding will lean against granting summary judgment to remove Alex.

#### **(4) Carl Lopez Likely Did Not Have Alex's Express or Implied**

##### **Permission to Use the Vehicle**

A court will not likely find that Carl Lopez had Alex's express or implied permission to use the vehicle at the time of the accident. Express permission is found when a vehicle owner gives the driver permission to operate the vehicle at a particular time. *See Long v. Tomlin*, 125 S.W.2d 171, 176 (Tenn. Ct. App. 1938). Implied permission is less clearly defined by Tennessee state courts. *See id.* If an owner tended to always permit the driver's use of the vehicle and did not place any restrictions on their use at times, then implied permission is usually inferred. *See id.* When permission is sometimes given and sometimes denied or certain restrictions are often placed on the driver's use of the vehicle, implied permission is not found. *See id.*

When the owner places no restrictions on the driver's use of his vehicle, the court is likely to find the driver had implied permission to use the vehicle. *See Thurmon v. Sellers*, 62 S.W.3d 145, 158 (Tenn. Ct. App. 2001). In *Thurmon*, the father leased a vehicle and gave it to his son to use for any personal endeavors. *See id.* at 155. No requirement was placed on the son to ask for his father's permission to use the vehicle and the father placed no restrictions on his use of the vehicle; his general and recreational uses were always authorized, including a drive to Memphis. *See id.* Because the father placed no restrictions on the son's use of the vehicle and the son had the ability to use the vehicle at any time without obtaining his father's permission, the court found that the son had the father's

implied permission to use the vehicle to drive to Memphis at the time of the accident. *See id.* at 158.

When an owner requires that a driver obtain permission each time they use the vehicle and the driver fails to do so, the driver did not have express permission at the time of the accident. In *Long*, the father rarely permitted his son to use his vehicle for pleasure. *See Long*, 125 S.W.2d at 177. The father required his son to get his permission each time he wanted to use the non-family-purpose vehicle for his own pleasure. *See id.* The son failed to get the father's permission to drive the vehicle to attend a young-peoples meeting, returning from which the accident occurred. *See id.* Since the father required his son to get permission each time he wanted to use the vehicle for pleasure and the son failed to get permission to go to the meeting, the court found that the son operated the vehicle without the owner's express permission at the time of the accident. *See id.* at 178.

Alex likely did not give Carl permission to use the vehicle at the time of the accident. The permission Carl received, if any, is distinguishable from the driver's permission in *Thurmon*. While the court found that the driver in *Thurmon* had the owner's implied permission to use the vehicle to drive out-of-town because the owner placed no restriction at all on its use, Carl's use of the vehicle for recreation was rarely granted and his use of the vehicle for out of state trips was previously denied. *See Thurmon*, 62 S.W.3d at 155. Based on these differences in restriction, a court will likely find that Carl did not have Alex's implied permission to use the vehicle for recreation to go to Dollywood.

Like the driver in *Long*, Carl similarly lacked express permission to use the vehicle at the time of the accident. Here, and in *Long*, the driver failed to obtain the required permission to operate the vehicle at the time of the accident. Like the driver in *Long* was required to obtain permission for pleasure-related use of the vehicle, Alex required Carl to

obtain her permission each time he wanted to use the vehicle for pleasure. A trip to Dollywood, an amusement park, would certainly be for pleasure. As the court in *Long* found that the driver lacked the owner's express permission to use the vehicle at the time of the accident given the nature of the trip and the respectively required permission, a court should find that Carl lacked Alex's express permission to use the vehicle at the time of the accident. *See id.* at 178. This conclusion will lean towards granting summary judgment for Alex Lopez.

### **CONCLUSION**

A Tennessee state court will likely find the family purpose doctrine inapplicable to Alex Lopez. Alex is not Carl's legal guardian and she restricted Carl's recreational use of the vehicle. Thus, a reasonable person is only likely to conclude that Alex is not the head of household and did not give Carl express or implied permission to use her car at the time of the accident. Based on the foregoing analysis, a court will likely grant summary judgment to remove Alex from the case.

**Applicant Details**

First Name **James**  
 Middle Initial **W**  
 Last Name **Fitts**  
 Citizenship Status **U. S. Citizen**  
 Email Address [jtfitts@umich.edu](mailto:jtfitts@umich.edu)

Address  
**Address**  
**Street**  
**1220 Tasman Drive, SPC 463**  
**City**  
**Sunnyvale**  
**State/Territory**  
**California**  
**Zip**  
**94089**  
**Country**  
**United States**

Contact Phone Number **4086135521**

**Applicant Education**

BA/BS From **University of California-Berkeley**  
 Date of BA/BS **May 2019**  
 JD/LLB From **The University of Michigan Law School**  
<http://www.law.umich.edu/currentstudents/careerservices>  
 Date of JD/LLB **May 6, 2024**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Michigan Law Review**  
 Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/  
 Externships **No**

Post-graduate Judicial  
Law Clerk      **No**

**Specialized Work Experience**

**Professional Organization**

Organizations      **Just the Beginning Organization**

**Recommenders**

Kornblatt, Kerry  
kkorn@umich.edu  
Clark, Sherman  
sjclark@umich.edu  
734-647-4039  
Halberstam, Daniel  
dhalber@umich.edu  
734-763-4408  
Litman, Leah  
lmlitman@umich.edu  
734-647-0549

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

## James “Tre” Fitts III

615 S. Main Street, Apartment 639, Ann Arbor, MI 48104 • (408) 613-5521 • jtfitts@umich.edu

June 12, 2023

The Honorable Jamar K. Walker  
U.S. District Court for the Eastern District of Virginia  
Walter E. Hoffman U.S. Courthouse  
600 Granby Street  
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year student at the University of Michigan Law School, and I am writing to apply for a clerkship in your chambers for the 2024 term or a later term. As a Black, gay man, it would be a particularly special experience, for me, to clerk for you. I would bring to your chambers my ability to move as fast as possible but as slowly as required, my capacity to navigate delicate situations with patience and empathy, and my resolve to engage difficult questions with curiosity.

Prior to law school, I spent time working to find the best way to serve children and families. This journey began at Wonderschool, a San Francisco-based startup that increases community access to quality early childhood education. It was at Wonderschool where I learned the value in moving as fast as possible, but as slowly as required, and to balance efficiency with creativity.

Since entering law school, I have remained committed to helping children and families. At the beginning of my 2L year, I volunteered for the Child Advocacy Law Clinic, where I completed casework for clients navigating neglect and abuse cases. My prior experience working with children has informed my lawyering style: I approach each client interaction with patience and empathy, and I approach each challenge with an open mind and an eye for nuance. I have also pursued research opportunities involving children and families. As research assistant to Professor Vivek Sankaran, I research terminations of parental rights. Not only do I engage my work with curiosity, but I also bring my whole self to each research assignment: my experiences as a Black, gay man inspire me to thoroughly question and explore what might otherwise be overlooked when assessing each child’s best interests.

I’ve also become a leader in my community. This year, I was elected to serve as the Executive Development Editor of the *Michigan Law Review*. Tasked with leading the Journal’s diversity, equity, and inclusion efforts, this role often requires me to make quick decisions based on the potential effects on both Journal members and the recruitment of future membership. This has sharpened my decision-making capabilities by challenging me to think clearly, carefully and creatively in striving to diversify our community through equitable write-on and selection policies.

Additionally, I have taken advantage of my unique opportunity to spend three summers at global law firms, Morrison & Foerster LLP and Gibson, Dunn & Crutcher LLP. These experiences have not only catalyzed my interest in civil litigation, but they have also encouraged me to both explore new legal issues and expand my wide array of legal interests.

I would greatly appreciate the chance to gain a new perspective on the litigation process and learn from you as your clerk. I believe that my identity, my experiences, and the many lessons that I carry with me as a result would allow me to contribute to the work of your chambers. Thank you for your time and consideration.

Respectfully,

Tre Fitts



## James “Tre” Fitts III

615 S. Main Street, Apartment 639, Ann Arbor, MI 48104 • (408) 613-5521 • jtfitts@umich.edu

### EDUCATION

#### UNIVERSITY OF MICHIGAN LAW SCHOOL

*Juris Doctor*

Ann Arbor, MI  
Expected May 2024

Journals: *Michigan Law Review*, Executive Development Editor, Vol. 122  
Awards: Alden J. “Butch” Carpenter Memorial Scholarship Award; Dean’s Scholar  
Activities: Senior Judge for Professor Kornblatt (teaching assistant for first-year legal writing course)  
Henry M. Campbell Moot Court Board, Judge Chair (community nominated; faculty selected)  
Research Assistant for Professor Vivek Sankaran (researching terminations of parental rights)  
Alden J. “Butch” Carpenter Memorial Scholarship Gala Co-Chair  
Black Law Students Association – Media Chair; Admissions Committee  
OUTLaws – Member

#### UNIVERSITY OF CALIFORNIA, BERKELEY

*Bachelor of Arts* in Media Studies, *High Distinction (magna cum laude)*

Berkeley, CA  
May 2019

Honors: Phi Beta Kappa; Media Studies Departmental Honors  
Thesis: “Use Your Black Voice”: The Racialization of Anthropomorphic Animals in Animated Films  
Activities: UC Berkeley School of Education – Undergraduate Student Instructor; Kesem Berkeley – Outreach

### EXPERIENCE

#### MORRISON & FOERSTER LLP

*2L Wetmore Fellow for Excellence, Diversity and Inclusion (Litigation Summer Associate)*

San Francisco, CA  
July 2023 – Aug. 2023

*1L Wetmore Fellow for Excellence, Diversity and Inclusion (Litigation Summer Associate)*

May 2022 – July 2022

- Counseled client regarding their strategic response to a demand letter alleging copyright infringement.
- Researched and wrote memo assessing the viability of a trademark infringement claim for client.
- Wrote memo for partner regarding California trade secrets law in preparation for mediation.

*SEO (Sponsors for Educational Opportunity) Law Fellow*

June 2021 – July 2021

- Drafted facts section of complaint alleging multiple civil rights causes of action for pro bono client.

#### GIBSON, DUNN & CRUTCHER LLP

*Litigation Summer Associate & Diversity Scholar*

Los Angeles, CA  
May 2023 – Present

#### CHILD ADVOCACY LAW CLINIC

*Student Attorney*

Ann Arbor, MI  
August 2022 – December 2022

- Managed casework for three clients navigating child neglect and abuse cases through written and oral advocacy, out-of-court advocacy, and client counseling.

#### UNIVERSITY OF HOUSTON, GRADUATE COLLEGE OF SOCIAL WORK

*Research Assistant, UpEND Movement*

Houston, TX  
May 2020 – May 2021

- Collected and analyzed research and data regarding the harmful impacts and racial disparities that manifest within the various intervention decision points in the foster care system.

#### ILK (NOW FOREWORD)

*Founding Member & Head of Strategy and Brand Development*

San Francisco, CA  
December 2019 – May 2020

- Ilk was a Y Combinator (Summer 2020) startup that helped parents establish community childcare systems.
- Conducted user research and collected data to develop high-level branding and acquisition strategies.

#### WONDERSCHOOL

*Customer Success & Demand Funnel Growth*

San Francisco, CA  
Jun. 2019 – Nov. 2019

- Managed a portfolio of 300 parents searching for childcare: identified needs, located programs, booked tours, negotiated tuition, and enrolled them in a program.

### ADDITIONAL

**Volunteer:** Kesem Michigan – Advisory Board Member; UC Berkeley Black Alumni Recruitment Committee

**Personal Interests:** Dodger baseball, Volleyball, Soccer, Film photography, Animated storytelling, HGTV



Control No: E196892701

Issue Date: 06/06/2023

Page 1

# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Fitts, James Winston

Student#: 64896170



*Paul R. Fitts*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
<b>Fall 2021 (August 30, 2021 To December 17, 2021)</b>								
LAW	510	002	Civil Procedure	Richard Friedman	4.00	4.00	4.00	B
LAW	530	001	Criminal Law	JJ Prescott	4.00	4.00	4.00	B
LAW	580	002	Torts	Sherman Clark	4.00	4.00	4.00	B
LAW	593	007	Legal Practice Skills I	Kerry Komblatt	2.00		2.00	S
LAW	598	007	Legal Pract: Writing & Analysis	Kerry Komblatt	1.00		1.00	S
<b>Term Total</b>				<b>GPA: 3.000</b>	<b>15.00</b>	<b>12.00</b>	<b>15.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.000</b>		<b>12.00</b>	<b>15.00</b>	
<b>Winter 2022 (January 12, 2022 To May 05, 2022)</b>								
LAW	520	002	Contracts	Gabriel Rauterberg	4.00	4.00	4.00	B+
LAW	540	001	Introduction to Constitutional Law	Leah Litman	4.00	4.00	4.00	B+
LAW	594	007	Legal Practice Skills II	Kerry Komblatt	2.00		2.00	S
LAW	737	001	Higher Education Law	Jack Bernard	4.00		4.00	P
<b>Term Total</b>				<b>GPA: 3.300</b>	<b>14.00</b>	<b>8.00</b>	<b>14.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.120</b>		<b>20.00</b>	<b>29.00</b>	

Continued next page &gt;

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL



Control No: E196892701

Issue Date: 06/06/2023

Page 2

# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Fitts, James Winston

Student#: 64896170



University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
<b>Fall 2022 (August 29, 2022 To December 16, 2022)</b>								
LAW	664	002	European Union Law	Daniel Halberstam	3.00	3.00	3.00	A-
LAW	747	001	Taxation of Individual Income	Reuven Avi-Yonah	4.00	4.00	4.00	A
LAW	910	001	Child Advocacy Clinic	Joshua Kay	4.00	4.00	4.00	A-
LAW	911	001	Child Advocacy Clinic Seminar	Frank Vandervort	3.00	3.00	3.00	A-
<b>Term Total</b>				<b>GPA: 3.785</b>	<b>14.00</b>	<b>14.00</b>	<b>14.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.394</b>	<b>34.00</b>	<b>43.00</b>		
<b>Winter 2023 (January 11, 2023 To May 04, 2023)</b>								
LAW	518	001	Race and the Law	Michelle Adams	3.00	3.00	3.00	B+
LAW	577	001	Intellectual Property Survey	David Blankfein-Tabachnick	3.00	3.00	3.00	A-
LAW	612	001	Alternative Dispute Resolution	Allyn Kantor	3.00	3.00	3.00	A
LAW	669	002	Evidence	Len Niehoff	4.00	4.00	4.00	B+
<b>Term Total</b>				<b>GPA: 3.553</b>	<b>13.00</b>	<b>13.00</b>	<b>13.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.438</b>	<b>47.00</b>	<b>56.00</b>		

Continued next page &gt;

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL.



Control No: E196892701

Issue Date: 06/06/2023

Page 3

The University of Michigan Law School  
Cumulative Grade Report and Academic Record

Name: Fitts, James Winston  
Student#: 64896170



*Paul R. Fitts*  
University Registrar

Course		Section	Load		Graded	Towards
Subject	Number	Number	Course Title	Instructor	Hours	Hours
Fall 2023 (August 28, 2023 To December 15, 2023)						
Elections as of: 06/06/2023						
LAW	463	001	Right of Assembly	Tabatha Abu El-Haj	2.00	
LAW	617	001	Anatomy of a Commercial Trial	Norman Ankers	3.00	
LAW	760	001	Trademarks and Unfair Competition	Jessica Litman	4.00	
LAW	799	001	Senior Judge Seminar	Ted Becker	2.00	
LAW	929	001	Child Welfare Appellate Clinic	Vivek Sankaran	5.00	
				Timothy Pinto		

End of Transcript  
Total Number of Pages 3

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL



## University of Michigan Law School Grading System

### Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

### Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.\*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.\* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- \* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

### Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

### Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records  
University of Michigan Law School  
625 South State Street  
Ann Arbor, Michigan 48109-1215  
(734) 763-6499

Office of the Registrar  
128 Sproul Hall #5404  
Berkeley, CA 94720-5404



University of California, Berkeley

*Walter Wong*  
Walter Wong, University Registrar

Name: Fitts III, James Winston  
Birthdate: 09/07/1998

Transfer Credits				Course	Title	Att	Earned	Grade	Points
Fullerton College				XENGLIS	R1A	4.0	4.0	A	16.00
				XHISTOR	7B	4.0	4.0	A-	14.80
				XSOCIO	3AC	4.0	4.0	A-	14.80
				XSTAT	2	4.0	4.0	A	16.00
	Transfer Totals:	3.00	3.00						

Test Credits				Att	Earned	Gr Units	Points
				16.0	16.0	16.0	61.60

Test	Description	Earned
AP USHST	AP AM HIST	5.3
AP ENGLNG	AP ENGL LANG	0
AP ENGCL	AP ENGL C/L	5.3
AP SPALNG	AP SPAN LANG	5.3
AP STAT	AP STAT	2.7
Test Credit Totals:		18.6

**Degrees Awarded**  
Degree: Bachelor of Arts  
Confer Date: May 17, 2019  
College: College of Letters and Science  
Degree: High Distinction in General Scholarship  
Honors:  
Major: High Honors in Media Studies

**2017 Spring**  
Program: Undergrad Letters & Science  
Major: Undeclared College of Letters and Science

Course	Title	Att	Earned	Grade	Points
AFRICAM	142AC	4.0	4.0	A	16.00
ENGLISH	R1B	4.0	4.0	A	16.00
JAPAN	80	4.0	4.0	A	16.00
POLSCI	1	4.0	4.0	A-	14.80
Term GPA	3.925	Term Totals	16.0	16.0	16.0
Term Honor: Dean's List					
Term Honor: Honors to Date					

**Beginning of Undergraduate Coursework**

**2016 Fall**  
Program: Undergrad Letters & Science  
Major: Undeclared College of Letters and Science - Fall Program for Freshmen

**2017 Fall**  
Program: Undergrad Letters & Science  
Major: Undeclared College of Letters and Science



Office of the Registrar  
128 Sproul Hall #5404  
Berkeley, CA 94720-5404



University of California, Berkeley

*Walter Wong*  
Walter Wong, University Registrar

Name: Fitts III, James Winston  
Birthdate: 09/07/1998

Term Honor: Honors to Date

Course	Title	Att	Earned	Grade	Points
AFRICAM 98	DIRECTED GROUP STDY	1.0	1.0	P	0.00
AMERSTD 101AC	US CULTURES IN TIME	4.0	4.0	A-	14.80
EPS C82	OCEANS	3.0	3.0	P	0.00
MEDIAST 10	INTRO TO MEDIAST	4.0	4.0	A-	14.80
RHETOR 157B	CONTEMP POL THEORY	4.0	4.0	A	16.00

Term GPA	3.800	Term Totals	16.0	16.0	12.0	45.60
----------	-------	-------------	------	------	------	-------

Term Honor: Honors to Date

#### 2018 Spring

Program: Undergrad Letters & Science  
Major: Media Studies

Course	Title	Att	Earned	Grade	Points
EDUC 40AC	EXPERIENCING EDUC	4.0	4.0	A	16.00
ESPM C10	ENVIRON ISSUES	4.0	4.0	P	0.00
INFO C167	VIRTUL COMM/SOC MED	4.0	4.0	A	16.00
MEDIAST 101	VISUAL COMM	4.0	4.0	A-	14.80

Term GPA	3.900	Term Totals	16.0	16.0	12.0	46.80
----------	-------	-------------	------	------	------	-------

#### 2018 Fall

Program: Undergrad Letters & Science  
Major: Media Studies

Course	Title	Att	Earned	Grade	Points
ASAMST 197	FIELD STUDY	3.0	3.0	P	0.00
MEDIAST H194	HONORS THESIS PREP	3.0	3.0	A	12.00
MEDIAST 112	MEDIA THEORIES	4.0	4.0	A	16.00
MEDIAST 190	SPECIAL TOPICS	4.0	4.0	A	16.00
SOCIOL 5	EVAL OF EVIDENCE	4.0	4.0	B+	13.20

Term GPA	3.813	Term Totals	18.0	18.0	15.0	57.20
----------	-------	-------------	------	------	------	-------

#### 2019 Spring

Program: Undergrad Letters & Science  
Major: Media Studies

Course	Title	Att	Earned	Grade	Points
ASAMST 197	FIELD STUDY	2.0	2.0	P	0.00
ENGLISH 133T	TOPICS AF AM	4.0	4.0	P	0.00
ENGLISH 176	LIT & POP CULTU	4.0	4.0	A-	14.80
MEDIAST H195	HONORS COLLOQUIUM	3.0	3.0	A	12.00
MEDIAST 113	MEDIA AND DEMOCRACY	4.0	4.0	A+	16.00

Term GPA	3.890	Term Totals	17.0	17.0	11.0	42.80
----------	-------	-------------	------	------	------	-------

Term Honor: Honors to Date

Undergraduate Career Totals

Cum GPA	3.863	Cum Totals	120.6	120.6	82.0	316.80
---------	-------	------------	-------	-------	------	--------

End of UC Berkeley Undergraduate Coursework

TRANSCRIPT INFORMATION

Office of the Registrar  
University of California  
Berkeley, California 94720-5404

History

The University of California was created by an Act of the State Legislature in 1868, and classes have been given at Berkeley since 1873.

Units of Credit

Until September 1966, credits were recorded as semester units (hours). From September 1966 through summer 1983 credits were recorded as quarter units (hours). Beginning with the fall term, 1983, credits are recorded as semester units (hours). Quarter system requires 180 units for bachelor's degree. Semester system, 120.

Transfer Credit

Only credit that is accepted by the University is indicated on the transcripts of Berkeley students. Individual courses are not shown.

Examinations and credits accepted are indicated on the transcript in the same manner as transfer credit.

Course Numbering System

- 1 - 99 -Lower division courses
- 100 - 199 -Upper division courses
- 200 - 299 -Graduate courses
- 300 - 499 -Professional courses for teachers or prospective teachers
- 600 - 602 -Special Study

Grades of Scholarship

Grades

The work of all students on the Berkeley campus is reported in terms of the following grades:

- A - Excellent
- B - Good
- C - Fair
- D - Barely Passed
- F - Failure
- P - Passed at minimum level of C-
- NP - Not Passed
- S - Satisfactory or passed at a minimum level of B-
- U - Unsatisfactory
- I - Work incomplete, due to circumstances beyond the student's control, but of passing quality
- IP - Work in progress; final grade to be assigned upon completion of entire course sequence
- M - Temporary administrative grade; not included in grade point computation

The grades A, B, C, and D may be modified by plus (+) or minus (-) suffixes.

Grade Points

Grade points per unit are assigned as follows:  
A=4, B=3, C=2, D=1, and F=none. When attached to the grades A, B, C, and D, plus (+) grades carry three-tenths of a grade point more per unit, and minus (-) grades carry three-tenths of a grade point less per unit than unaffixed grades, except for A+, which carries 4.0 grade points per unit as does an A.

Courses graded P, NP, S, U, I, IP, or M are not used in computing the grade point average.

Academic Standing

Good Standing

Undergraduate: C average  
Graduate: B average or better on all work attempted at any UC campus after a bachelor's degree.

Academic Probation

Undergraduate students are placed on academic probation if at the end of any term their cumulative grade point average is less than 2.0 (C average) computed on the total of all courses undertaken in the University. However, in the Colleges of Chemistry and Engineering, probation is determined on a term basis.

Credit Codes

Credit codes may determine the calculation of credit or annotate a course entry as follows:

Current Records System

Fall 1995 to Present

Note: An "I" assigned as of Fall 1973 to present is not included in grade point computation.

Pass/Fail Courses

- PN - Course offered only on Pass/Not Pass basis
- EPN - Undergraduate grading option Passed/Not Passed
- ESU - Graduate grading option Satisfactory/Unsatisfactory
- SUS - Graduate courses offered only on Satisfactory/Unsatisfactory basis

PN, EPN, ESU, SUS courses are not included in units ATTM (attempted) or units PSSD (passed), but are included in CREDITS COMPLETED.

Prefixes

- C - Cross-listed
- H - Honors
- N - Summer course
- R - Reading & Composition
- W - On-line

Previous Record Systems

Prior to Fall 1975

Note: An "I" assigned prior to Fall 1973 is included in grade point computation as an F grade.

This Academic Transcript from University of California - Berkeley located in Berkeley, CA is being provided to you by Credentials Inc. Under provisions of, and subject to, the Family Educational Rights and Privacy Act of 1974, Credentials Inc. of Northfield, IL is acting on behalf of University of California - Berkeley in facilitating the delivery of academic transcripts from University of California - Berkeley to other colleges, universities and third parties using the Credentials' TranscriptsNetwork™.

This secure transcript has been delivered electronically by Credentials Inc. in a Portable Document Format (PDF) file. Please be aware that this layout may be slightly different in look than University of California - Berkeley's printed/mailed copy, however it will contain the identical academic information. Depending on the school and your capabilities, we also can deliver this file as an XML document or an EDI document. Any questions regarding the validity of the information you are receiving should be directed to: Office of the Registrar, University of California - Berkeley, 128 Sproul Hall #5404, Berkeley, CA 94720-5404, Tel: (510) 664-9181.

**UNIVERSITY OF MICHIGAN LAW**  
**Legal Practice Program**  
801 Monroe Street, 945 Legal Research  
Ann Arbor, Michigan 48109-1210

Kerry Kornblatt  
Clinical Assistant Professor of Law

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write this letter of recommendation in support of Tre Fitts's judicial law clerk application. Tre was a student in my year-long Legal Practice course (which is Michigan's legal research and writing course). He'll also be serving as a teaching assistant for me next school year. I am pleased to recommend him.

Tre was one in a class of 20 that I taught for the entire 2021-22 school year. Tre's work was strong and he received a "pass" in my class. (The class is graded on a modified pass/fail system; I am permitted to give a "high pass" to those scoring in the top fifth of the class.)

While Tre did well in my class, his "pass" isn't the whole story. Tre was a regular and thoughtful contributor in class who made our class sessions better. He also showed impressive development over the course of the year. In his major first semester assignment (the research memo), he scored right around the middle of the class. By the second semester, his major writing assignment (the trial brief) scored closer to the top third. Among the particular strengths in Tre's brief were his persuasive tone, thoughtful signaling and labeling to guide the reader through his points, and his impressive editing process resulting in an incredibly polished brief. (All qualities that translate nicely to clerkship writing tasks.)

Tre's improvement in my class was the product of keeping at it, learning from feedback, and adjusting. One glance at his resume reveals that his resiliency and commitment to developing his legal skills is clearly not something that was unique to my class. Tre is plainly a student who is building strength every year in law school. When we spoke about his clerkship interest, he told me he was "not the same student that was a year ago." He didn't mean it in a bragging way; he just wanted me to know that he was taking full advantage of the opportunities he had to learn and grow as a law student. His grades reflect that growth, as well as his deep involvement in numerous aspects of life at Michigan Law.

About that deep involvement. Tre is the kind of student who forms the connective tissue in a law school community. As reflected in his resume, Tre is very active at Michigan. But, the listing of his leadership positions and activities doesn't fully do justice to his role in the law school community. One example? As last year's recipient of the Butch Carpenter Memorial Scholarship, Tre was tapped to co-chair this year's Butch Carpenter Memorial Scholarship Gala. Through my conversations with him, I learned that this involved wedding-level event planning over the past year. The nature of his commitment was made clear to me just last week, when we ran into each other at the law school sometime between 11pm and midnight. I was staying late grading; he was working on Gala plans. We compared notes and agreed that 1) we were up way too late, and 2) we both really valued what we were doing. Grading is my job, though. Tre's efforts are above and beyond his role as law student.

In addition to his commitment to the law school community, Tre happens to be an incredibly warm and engaging person. He is obviously well-liked by his colleagues. In the small community of a judicial chambers, Tre is just the kind of person you want.

Because of all of his standout qualities, I asked Tre to serve as a teaching assistant for my class next year. My teaching assistants play a central role in my class—they hold regular conferences with students, they review and comment on student writing assignments, and they plan writing workshops and other substantive programming. I'm confident Tre will excel in the role. And his approach to being a student—his resiliency and dedication to getting it right—is precisely the kind of example I want my first-years to emulate.

For all of these reasons, Tre would be a truly valuable addition to any judicial chambers. If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

Sincerely,

/Kerry Kornblatt/

Kerry Kornblatt  
Clinical Assistant Professor of Law

Kerry Kornblatt - [kkorn@umich.edu](mailto:kkorn@umich.edu)

UNIVERSITY OF MICHIGAN LAW  
701 South State Street  
Ann Arbor, MI 48109

SHERMAN J. CLARK  
Kirkland & Ellis Professor of Law

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

RE: Recommendation for James “Tre” Fitts

Dear Judge Walker:

James “Tre” Fitts may have taken a term or two to find his academic stride; but has he ever. Tre is a terrific student who will be a very good and reliable clerk and lawyer. He was in my torts class; and I have had a chance to talk with and get to know him outside of class. Tre is a very smart, very hard-working guy who just wants to stick up for people who need it.

Tre is a very strong student—combining substantial raw intellectual horsepower with a solid work ethic. He was always prepared for class, always on top of the material, and always willing and able to contribute to the class conversation when called upon.

He has the ability to analyze difficult issues quickly and clearly, without losing the forest for the trees. What this means is that he also is able to see and understand the connections between issues—rather than getting caught up in the minutia and losing the bigger picture.

Tre is also both careful and creative. He is never careless. He reads carefully and makes sure to get things right. But at the same time he is not narrow or a drudge. On the contrary, he is creative and thoughtful in looking beyond the obvious categories and obvious implications of legal and policy issues.

Tre is also genuinely and deeply engaged with his education. He is not a grade grubber. Rather, he studies and works hard because he truly wants to learn. That attitude is also evident in the good and thoughtful points and questions he raises in class discussions.

Tre is also truly dedicated to public service. I hope you have a chance to get to know him and learn about his aspirations. I have no doubt that he will be an excellent and valuable clerk and lawyer—one I will be proud to have taught and you will be proud to have employed and helped train.

Sincerely,  
Sherman J. Clark

Sherman Clark - sjclark@umich.edu - 734-647-4039

**UNIVERSITY OF MICHIGAN LAW SCHOOL**  
625 South State Street  
Ann Arbor, Michigan 48109-1215

**Daniel H. Halberstam**  
Eric Stein Collegiate Professor of Law  
Director, European Legal Studies

May 23, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to write in support of James "Tre" Fitts, who has applied for a clerkship in your chambers. Tre is a thoughtful young lawyer who will make a fine law clerk and future attorney.

I came to know Tre when he took my Introduction to European Union law last fall. The class is essentially an introduction to the constitutional architecture and fundamental rights of the EU, rather similar to my Introduction to (U.S.) Constitutional Law for J.D. students. Tre was highly interested in the subject, always came prepared to class, and was ready to engage with highly productive comments and questions.

For his research paper in EU law, Tre wrote a concise and effective piece deftly analyzing the jurisprudence of the Court of Justice of the European Union ("CJEU") on same-sex marriage. The paper considers the CJEU's Pancharevo decision establishing the right of a child of a same-sex couple to obtain a birth certificate from their "home" state in connection with the exercise of their right to free movement under the EU Treaties. Tre considers this judgment in light of cases of the European Court of Human Rights ("ECtHR") under the European Convention of Human Rights to weigh in on how the CJEU might decide a follow-up case that does not also involve the exercise of free movement rights. Drawing on ECtHR caselaw by analogy, Tre argues that the CJEU should expand its Pancharevo decision beyond the context in which the relevant citizens move from one Member State to another, and provide equivalent substantive rights to "rainbow" families who simply reside in any given Member State. At the same time, however, he argues, again based on relevant ECtHR decisions, that the CJEU should not (at this point) require EU Member States to recognize the same-sex marriage as such, but only to provide same-sex couples with rights equivalent to marriage.

For an independent research paper on a subject of EU law that we had not covered in class at all, Tre did a great job. To be sure, his half-way solution leaves certain questions unanswered, such as whether his solution is proposed as a strategic proposal or as a principled position (and, if the latter, how such a position might be defended, as a matter of principle). Nevertheless, it nicely researches and presents the relevant caselaw and stakes out a practical position in the way a lawyer might do in a brief.

In my conversations with Tre, his passion as a lawyer for child welfare issues was palpable. It was surely an energizing factor in tackling this difficult area of EU law. More broadly, in our conversations in and outside of class, Tre always came across as a young maturing lawyer of utmost seriousness and integrity.

In summary, I recommend Tre Fitts to you most highly. I have no doubt he would make a very fine clerk. Please do not hesitate to contact me with any questions you may have.

Yours sincerely,

Daniel H. Halberstam

Daniel Halberstam - dhalber@umich.edu - 734-763-4408

University of Michigan  
Law School

Leah Litman  
Professor of Law

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I'm pleased to write this letter of recommendation for James ("Tre") Fitts, who has applied for a clerkship in your chambers. Tre is an extremely personable, hard-working student who started to excel at law school once he had two semesters under his belt. I think he'll make a good law clerk, and I also think he'll be someone you'll be delighted to have around your chambers and very happy to know thereafter. Because I think so highly of Tre, I also reached out to one of my colleagues, Prof. Vivek Sankaran, whom Tre is doing some research for and have included his thoughts on Tre's candidacy in this letter as well.

I got to know Tre as a student in my winter 2022 introduction to constitutional law class. While the class is large, I call on a large number of students each class session so I end up speaking with all of the students about once per week. I also offer the students an interim assignment, so I saw an interim writing assignment from the students in addition to a final exam.

Tre was a delight to have in class. He was bright, focused, and had the best attitude you can have as a law student – an eagerness to learn and get better and better at what he was doing. He knew the materials, of course. But he was also happy to engage with the bigger-picture conceptual or methodological questions that can be more of a quagmire. And when I'd follow up with him with some pushback, he was always ready to pause, collect himself, and keep at it – and do well in the process.

Tre's written work was good even though he didn't end up writing an exam that put him at the top of the class. I really do think his grades during his first year are a product of him figuring out the law school exam thing over time, and are not a complete picture of the kind of law clerk he would be. I think the upward trajectory of his grades better captures Tre's skills and work ethic – as do the many different leadership positions he's taken on during that time. Tre's peers hold him in high esteem and rightfully so.

Interpersonally, Tre is absolutely someone I would love to have around chambers. He's friendly and personable, but still professional. He brought his mother to con law one day and we still joke about how she likes to tell her friends all about substantive due process and unenumerated rights because of what she learned that day. He really is a delight and someone who's going to go places not just because of his analytical abilities and work ethic, but also because he's just plain fun to work with.

Because I think so highly of Tre – and only seen written work he's done in the context of exam constraints – I reached out to my colleague, Prof. Vivek Sankaran, since Tre is doing research for him in the winter 2023 semester. Prof. Sankaran had this to say about Tre's work:

*[Tre has] been my RA since the beginning of the year and has done amazing work for me. I've had him do a deep dive into caselaw in Alabama around their termination of parental rights jurisprudence and he has done such great stuff. Alabama has really interesting case law involving TPRs drawing from a federal case in the 1970s that held that any state child welfare statute would have to pass strict scrutiny. Alabama state appellate courts embraced that federal decision and incorporated that logic to evaluate TPR decisions, requiring the state to show that no other alternatives to TPR exist before granting a request. It's the only state in the country with this caselaw. Tre researched all of this and showed me how the law developed through the history of caselaw.*

*His research has been very meticulous and his memos are incredibly well-written. He is clear, pulls relevant details and is super well organized. I incorporated his research into an article generally about the constitutional framework around TPRs that is being published in the Family Court Review and am working on an article specifically on Alabama this summer. His research will be the foundation for that piece.*

*I actually think he is the best RA I've had. I could rearrange his work into an article super easily and plan to. I might also ask him to co-author it with us. And he's delightful to work with. I'm so grateful to have run into him!*

Prof. Sankaran is an incredible litigator who regularly appears in the Michigan Supreme Court, and his recommendation of Tre confirms my belief that he's going to be a great law clerk – and a much better clerk than his grades (particularly his first semester grades) might suggest.

Tre is especially interested in working in the family law space and on behalf of juveniles. I think he will have a very promising career in that field.

If you have any questions I'm happy to answer them. I can be reached by phone (734-647-0549) or email ([lmilman@umich.edu](mailto:lmilman@umich.edu)).

Leah Litman - [lmilman@umich.edu](mailto:lmilman@umich.edu) - 734-647-0549

For whatever it is worth, I clerked for two years (once on the U.S. Court of Appeals for the Sixth Circuit and once on the U.S. Supreme Court), and I think Tre has what it takes to succeed as a law clerk. I very much hope you give his application close consideration.

Sincerely,

Leah M. Litman

Leah Litman - lmlitman@umich.edu - 734-647-0549

---

**James “Tre” Fitts III****Writing Sample 1**

---

This writing sample is a legal memorandum that I wrote as a summer associate at Morrison Foerster LLP. The assignment was given to me by a partner at the firm in the Intellectual Property group. The factual basis for this assignment was as follows: Our client, “PARTY A,” gave license to the opposing party, “PARTY B,” to market trademarked products owned by PARTY A. Our client, PARTY A, sought to bring a reverse passing off trademark claim against PARTY B when they discovered that PARTY B marketed goods, developed from products owned by PARTY A, under the trademark of PARTY B. This assignment required me to research (1) how the Ninth Circuit interprets the meaning of “origin of goods” when adjudicating trademark claims, and (2) whether our client could bring a viable reverse passing off trademark claim against another party. This writing sample is entirely self-edited.



**MORRISON FOERSTER**

## MEMORANDUM

---

TO: PARTNER

FROM: Tre Fitts

DATE: June 2, 2022

RE: Reverse Passing Off Claim against PARTY B

---

This memorandum addresses how the Ninth Circuit interprets the phrase “origin of goods” when adjudicating reverse passing off false designation of origin claims. This memorandum also considers the viability of a potential reverse passing off claim brought against PARTY B.

PARTY A likely does not have a viable reverse passing off claim against PARTY B because PARTY A is the owner of the intellectual property used to develop the GOODS but is not the producer of the actual GOODS offered for sale.

**I. Summary of Facts**

PARTY A, the seller, entered a licensing agreement with PARTY B, the licensee, which includes terms allowing PARTY B to market GOODS from PRODUCTS owned by PARTY A and covered under PARTY A trademarks. Based on the facts available, we understand that these PRODUCTS are owned by PARTY A and that the PRODUCTS are the intellectual property of PARTY A. Further, we understand that PARTY B marked GOODS developed from PARTY A-owned PRODUCTS under its own trademarks. In response, PARTY A seeks to bring a reverse passing off claim against PARTY B.

**II. Reverse Passing Off Statutory Framework**

## III ORRISON FOERSTER

The purpose of the Lanham Act is to protect consumers from deception and confusion. *See New West Corp. v. N.Y.M. Co. of California*, 595 F.2d 1194, 1201 (9th Cir. 1979). Section 43(a) of the Lanham Act prohibits use of “any word, term, name, symbol, or device...which...is likely to cause confusion...as to the origin...of [their] goods.” *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 37 (2003) (citing 15 U.S.C. § 1125(a)). Section 43(a) of the Lanham Act gives rise to false designation of origin claims for which there are two types: (1) “passing off” and (2) “reverse passing off.” *Id.* at 27. Passing off “occurs when a producer misrepresents his own goods or services as someone else’s.” *Id.* Reverse passing off occurs when “the producer misrepresents someone else’s goods or services as [their] own.” *Id.*

### a. Elements of False Designation of Origin Claims

Within the Ninth Circuit, a successful false designation of origin claim must show that “(1) defendant uses a designation (any word, term, name, device, or any combination thereof) or false designation of origin; (2) the use was in interstate commerce; (3) the use was in connection with goods or services; (4) the designation or false designation is likely to cause confusion, mistake, or deception as to (a) the affiliation, connection, or association of defendant with another person, or (b) as to the origin, sponsorship, or approval of defendant's goods, services, or commercial activities by another person; and (5) the plaintiff has been or is likely to be damaged by these acts.” *Zamfir v. Casperlabs, LLC*, 528 F. Supp. 3d 1136, 1143 (S.D. Cal. 2021) (citing *United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 143 F. Supp. 3d 982, 1015 (N.D. Cal. 2015)). Because reverse passing off is a form of false

## III. HARRISON F. FOERSTER

designation of origin, the aforementioned elements also apply to reverse passing off claims, and rely on a determination of the “origin” of the goods at issue.

### b. Definition of “Origin” in Supreme Court Precedent

A party that produces the product at issue constitutes the product’s origin; and, origin cannot be tied back to copyrightable or patentable designs, ideas, or concepts. *Dastar*, 539 U.S. 23, 36–37 (2003). In *Dastar*, the Supreme Court held that the phrase “origin of goods” in the Lanham Act “refers to the producer of the tangible goods that are offered for sale, and not to the author of any idea, concept, or communication embodied in those goods.” *Id.* at 37. The Court concluded that the plaintiff did not present a valid reverse passing off claim because the plaintiff was not the producer of the product at issue—clothes—reasoning that “the Lanham Act referred to the producer of the clothes, and not the producer of the (potentially) copyrightable or patentable designs that the clothes embodied.” *Id.* at 36–37.

### III. A Reverse Passing Off Claim Against PARTY B Would Likely Not Succeed

If PARTY A brings a reverse passing off claim against PARTY B, it is unlikely that the claim will succeed. The Supreme Court in *Dastar Corporation v. Twentieth Century Fox Film Corporation* established precedent declining to validate reverse passing off claims where the plaintiff does not produce the good at issue. 539 U.S. 23 (2003). The Ninth Circuit has followed suit. See *OTR Wheel Eng’g, Inc. v. W. Worldwide Servs., Inc.*, 897 F.3d 1008 (9th Cir. 2018).

#### a. Application of *Dastar* in the Ninth Circuit

The Ninth Circuit has continuously adhered to the Supreme Court’s precedent in *Dastar*. At the appellate level, the Ninth Circuit applied the Supreme Court’s *Dastar* holding

## III ORRISON FOERSTER

in *OTR Wheel Engineering, Inc. v. West Worldwide Services, Inc.* There, the court declined to permit a reverse passing off claim brought against the defendant on the grounds that the defendant copied the plaintiff's tire product design to create identical tires. The court held that "a reverse passing off claim cannot be brought to prevent the copying of intellectual property." *OTR Wheel Eng'g, Inc. v. W. Worldwide Servs., Inc.*, 897 F.3d 1008, 1016 (9th Cir. 2018). The court concluded that customers would likely not be confused regarding the origin of the product at issue. *Id.* at 1019.

The Supreme Court's holding in *Dastar* is similarly applied in Ninth Circuit district court jurisprudence. In *Williams v. UMG Recordings*, the U.S. District Court for the Central District of California adopted the Supreme Court's holding in *Dastar*, denying the plaintiff's reverse passing off claim that asserted ownership of a film that the plaintiff contributed to without receiving credit. 281 F. Supp. 2d 1177, 1184 (C.D. Cal. 2003). The court held that a reverse passing off claim is not actionable where a defendant is "accused only of failing to identify someone who contributed not goods, but ideas or communications...to [a defendant's] product." *Id.* at 1184. The court reasoned that while the plaintiff "would have a claim if defendants purchased copies of plaintiff's goods...and repackaged them as their own," the plaintiff's "authorship and direction embodied in the film" at issue do not provide sufficient grounds for a valid reverse passing off claim. *Id.* at 1183. Further, the court concluded that the *Dastar* holding does not depend on whether the involved work in a matter is copyrighted or not. *Id.* at 1185.

## III ORRISON FOERSTER

District courts in Washington have also adhered to the *Dastar* holding.<sup>1</sup> In *CMSI, Inc. v. Pacific Cycle, Inc.*, the U.S. District Court for the Western District of Washington denied the plaintiff's reverse passing off claim where the plaintiff believed that the defendant copied scooters sold by the plaintiff and sold the seemingly identical scooters under the defendant's trademark. *CMSI, Inc. v. Pac. Cycle, Inc.*, No. C06-488 JLR, 2006 WL 2942794, at \*1 (W.D. Wash. Sept. 15, 2006). The court denied the claim on the grounds that the plaintiff did not establish that "its role in the development of the scooters in dispute makes [the plaintiff] the scooters' 'origin.'" *Id.* at \*3. The court highlighted that the Supreme Court in *Dastar* "declined to equate creation with 'origin' under the Lanham Act." *Id.* at \*4. Therefore, being the first to "create, develop, or manufacture a product" is not sufficient for a party to claim that the product at issue originates with them. *Id.* at \*5. The court again pointed to *Dastar* to demonstrate that placing a mark on a product does not necessarily "signal to consumers that it invented the scooter, developed the scooter, [or] homologated the scooter." *Id.* On the contrary, the mark indicates that the defendant "has produced (or commissioned the production of) the scooter, and stands behind it," and does not violate trademark law by doing so. *Id.* In this regard, a consumer does not experience confusion as a result of the added mark because "[a] consumer who buys a branded product does not automatically assume that the brand-name company is the same entity that came up with the idea for the product, or designed the product—and typically does not care whether it is." *Id.* at \*4.

<sup>1</sup> Other district courts have also ruled against reverse passing off claims in a manner similar to *Dastar*. For example, see *FNA Grp., Inc. v. Jiangsu Longteng-Pengda Elec. Mech. Co.*, No. 218CV00812RFBVCF, 2020 WL 2840154, at \*7 (D. Nev. May 31, 2020). There, however, the U.S. District Court for the District of Nevada relied on the language of Nevada Statute (NRS 598.0195(4)) rather than applying *Dastar* specifically.

## III ORRISON FOERSTER

### b. Application of *Dastar* to PARTY A's Potential Claim Against PARTY B

PARTY A likely does not have a viable reverse passing off claim against PARTY B. At present, whether PARTY A can satisfy the basic elements of a false designation of origin claim, as previously outlined, is less important. The primary question here, instead, is whether PARTY A can claim that it is the “origin” of the GOODS that were marked under the PARTY B trademark. The Supreme Court’s holding in *Dastar* explicitly states that “origin” refers to the “producer of the tangible goods that are offered for sale and not the author of any idea, concept, or communication embodied in those goods.” *Dastar*, 539 U.S. at 37. Though PARTY A could argue that the PRODUCTS that are proprietary to them *are* in fact tangible goods and not ideas or concepts, PARTY A would likely run into issues given that PARTY A licensed PARTY B to develop GOODS using PARTY A-owned PRODUCTS. Furthermore, assuming that PARTY B actually did develop the GOODS at issue, a court would likely determine that PARTY B is the producer of the GOODS and, consequently, is the origin of said GOODS. In this instance, PARTY A’s reverse passing off claim would likely not succeed because the designation of the origin of the GOODS at issue would not be false and consumers would not be confused regarding the origin of the GOODS at issue.

The anticipated outcome might be different if it is discovered that PARTY A developed the GOODS at issue. If, in this scenario, PARTY B purchased GOODS that were developed by PARTY A and then proceeded to use the PARTY B mark on those GOODS, PARTY A could have a viable reverse passing off claim against PARTY B.

**Applicant Details**

First Name **Brigid**  
 Last Name **Fitzpatrick**  
 Citizenship Status **U. S. Citizen**  
 Email Address [brigidf@umich.edu](mailto:brigidf@umich.edu)  
 Address

**Address**

**Street**  
**45751 Bristol Circle**  
**City**  
**Novi**  
**State/Territory**  
**Michigan**  
**Zip**  
**48377**  
**Country**  
**United States**

Contact Phone Number **2489461600**

**Applicant Education**

BA/BS From **University of Michigan-Ann Arbor**  
 Date of BA/BS **December 2020**  
 JD/LLB From **The University of Michigan Law School**  
<http://www.law.umich.edu/currentstudents/careerservices>  
 Date of JD/LLB **May 3, 2024**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Michigan Journal of Law Reform**  
 Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/  
 Externships **No**

Post-graduate Judicial  
Law Clerk      **No**

**Specialized Work Experience**

**Recommenders**

Friedman, Richard  
rdfrdman@umich.edu  
734-647-1078

Carroll, Maureen  
msclaw@umich.edu  
734-764-0687

C.deBaca, Luis  
ldebaca@umich.edu  
734-647-4209

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**



Brigid Fitzpatrick  
45751 Bristol Circle  
Novi, MI 48377  
(248) 946-1600  
brigidf@umich.edu

May 26, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year student at the University of Michigan Law School and I am writing to apply for a clerkship in your chambers for the 2024-2025 term.

As someone committed to advocating for low-income and marginalized communities, I have sought out opportunities in law school to gain practical experience so that I can be an effective litigator. I have had the opportunity to work as a student attorney in the Michigan Innocence Clinic and help exonerate people who were wrongfully convicted. Through the clinic, I have gotten valuable experience writing memoranda and briefs, while also getting practical experience with the criminal judicial system. I was also selected to serve as an Articles Editor for the Michigan Journal of Law Reform, which has given me experience editing academic research. This summer I am working for the Great Lakes Environmental Law Center where I will have the opportunity to write memoranda and research legal and policy issues. I hope that clerking will give me further opportunities to hone my research and writing skills, as well as exposure to a wide range of legal issues.

I have attached my resume, law school transcript, and a writing sample for your review. Letters of recommendation from the following professors are also attached:

- Professor Richard Friedman: rdfdrman@umich.edu, 734-647-1078.
- Professor Maureen Carroll: msclaw@umich.edu, 734-764-0687.
- Professor Luis CdeBaca: ldebaca@umich.edu, 734-647-4209.

Thank you for your time and consideration.

Respectfully,

Brigid Fitzpatrick

## Brigid Fitzpatrick

45751 Bristol Circle, Novi MI 48377

248-946-1600 • brigidf@umich.edu

### EDUCATION

#### UNIVERSITY OF MICHIGAN LAW SCHOOL

*Juris Doctor*

Ann Arbor, MI

Expected May 2024

GPA: 3.952 (historically top 2%)

Activities: Journal of Law Reform, *Articles Editor*, Vol. 57 (Note in progress)

Honors: Certificate of Merit recipient for Evidence; Certificate of Merit recipient for Constitutional Law

#### UNIVERSITY OF MICHIGAN

*Bachelor of Arts*, with High Distinction, in Political Science and Spanish

Ann Arbor, MI

Graduated December 2020

Honors: University Honors (2017 - 2020)

James B. Angell Scholar (GPA-based award)

William J. Branston Freshman Prize (GPA-based award)

Activities: President, Residential College LGBT Forum

Undergraduate Research Assistant, Political Science Department

### EXPERIENCE

#### GREAT LAKES ENVIRONMENTAL LAW CENTER

*Summer Law Intern*

Detroit, MI

May 2023 - August 2023

#### UNIVERSITY OF MICHIGAN LAW SCHOOL

*Research Assistant for Professor Friedman*

Ann Arbor, MI

January 2023 - March 2023

- Researched evidentiary issues such as admission of character evidence and impeachment

#### MICHIGAN INNOCENCE CLINIC

*Student Attorney*

Ann Arbor, MI

August 2022 - May 2023

- Investigated cases on behalf of inmates who are innocent of the crimes for which they have been convicted
- Wrote memos analyzing potential ineffective assistance and new evidence claims

#### FARMWORKER LEGAL SERVICES

*Summer Law Intern*

Kalamazoo, MI

May 2022 - August 2022

- Provided legal advice to clients on issues such as workers' compensation and breach of contract claims
- Wrote memos and briefs analyzing topics such as visa eligibility and employment discrimination claims
- Created educational materials regarding workers' tax obligations and rights

#### PANERA BREAD

*Cashier*

Novi, MI

September 2020 - August 2021

- Managed stress in a fast-paced environment; worked with team members to create positive environment

#### SIERRA CLUB

*Political intern*

Northville, MI

May 2020 - August 2020

- Educated voters in southeast Michigan via phone banking about key environmental issues

### ADDITIONAL

**Languages:** Spanish (proficient)

**Volunteer:** Assistant ESL instructor at an Ann Arbor public middle school, campaign volunteer with the Michigan Democratic Party



Control No: E196342601

Issue Date: 05/17/2023

Page 1

# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Fitzpatrick, Brigid  
Student#: 62769701



*Paul R. Johnson*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
---------	---------------	----------------	--------------	------------	------------	--------------	-----------------	--------------

### Fall 2021 (August 30, 2021 To December 17, 2021)

LAW	510	004	Civil Procedure	Maureen Carroll	4.00	4.00	4.00	A-
LAW	520	003	Contracts	Albert Choi	4.00	4.00	4.00	A
LAW	540	001	Introduction to Constitutional Law	Daniel Halberstam	4.00	4.00	4.00	A+
LAW	593	013	Legal Practice Skills I	Timothy Pinto	2.00		2.00	S
LAW	598	013	Legal Pract:Writing & Analysis	Timothy Pinto	1.00		1.00	S

<b>Term Total</b>	<b>GPA: 4.000</b>	<b>15.00</b>	<b>12.00</b>	<b>15.00</b>
<b>Cumulative Total</b>	<b>GPA: 4.000</b>		<b>12.00</b>	<b>15.00</b>

### Winter 2022 (January 12, 2022 To May 05, 2022)

LAW	530	002	Criminal Law	Luis CdeBaca	4.00	4.00	4.00	A
LAW	580	001	Torts	Kyle Logue	4.00	4.00	4.00	A
LAW	594	013	Legal Practice Skills II	Margaret Hannon	2.00		2.00	S
LAW	660	001	Boundaries of Citizenship	Rebecca Scott	3.00	3.00	3.00	A

<b>Term Total</b>	<b>GPA: 4.000</b>	<b>13.00</b>	<b>11.00</b>	<b>13.00</b>
<b>Cumulative Total</b>	<b>GPA: 4.000</b>		<b>23.00</b>	<b>28.00</b>

Continued next page >

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL



Control No: E196342601

Issue Date: 05/17/2023

Page 2

# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Fitzpatrick, Brigid  
Student#: 62769701



*Paul R. Johnson*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Grade
<b>Fall 2022 (August 29, 2022 To December 16, 2022)</b>								
LAW	630	001	International Law	Karima Bennoune	3.00	3.00	3.00	A-
LAW	669	001	Evidence	Richard Friedman	4.00	4.00	4.00	A+
LAW	976	001	Michigan Innocence Clinic	David Moran	4.00	4.00	4.00	A-
				Elizabeth Cole				
				Imran Syed				
LAW	977	001	Michigan Innocence Clinic Sem	David Moran	3.00	3.00	3.00	A-
				Elizabeth Cole				
				Imran Syed				
<b>Term Total</b>				<b>GPA: 3.871</b>	<b>14.00</b>	<b>14.00</b>	<b>14.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.951</b>		<b>37.00</b>	<b>42.00</b>	
<b>Winter 2023 (January 11, 2023 To May 04, 2023)</b>								
LAW	404	001	SexualOrien/GenderID & the Law	Maureen Carroll	2.00	2.00	2.00	A+
LAW	601	001	Administrative Law	Nina Mendelson	4.00	4.00	4.00	A
LAW	900	430	Research	Luis CdeBaca	1.00	1.00	1.00	S
LAW	976	001	Michigan Innocence Clinic	David Moran	4.00	4.00	4.00	A-
				Elizabeth Cole				
				Imran Syed				
LAW	977	001	Michigan Innocence Clinic Sem	David Moran	3.00	3.00	3.00	A
				Elizabeth Cole				
				Imran Syed				
<b>Term Total</b>				<b>GPA: 3.953</b>	<b>14.00</b>	<b>13.00</b>	<b>14.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.952</b>		<b>50.00</b>	<b>56.00</b>	

Continued next page >

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL



Control No: E196342601

Issue Date: 05/17/2023

Page 3

# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Fitzpatrick, Brigid  
Student#: 62769701



*Paul R. Johnson*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Hours	Load	Graded	Towards	Program	Grade
<b>Fall 2023 (August 28, 2023 To December 15, 2023)</b>										
Elections as of: 05/17/2023										
LAW	626	001	Immigrant Justice Lab	Melissa Borja	3.00					
LAW	677	001	Federal Courts	Gil Seinfeld	4.00					
LAW	686	001	Federal Indian Law	Kirsten Carlson	3.00					
LAW	741	001	Interdisc Prob Solv	Luis CdeBaca	3.00					
Slavery and the Built Environment: The Plantation										
Slavery/Built Env: Plantation										
LAW	803	001	UAdvocacy for Underdogs	Andrew Buchsbaum	2.00					

### Remarks:

25-Jul-2019 MICH SPANISH PROFICIENCY

End of Transcript  
Total Number of Pages 3

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL



## University of Michigan Law School Grading System

### Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

#### Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.\*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.\* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- \* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

### Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

### Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records  
University of Michigan Law School  
625 South State Street  
Ann Arbor, Michigan 48109-1215  
(734) 763-6499

THE UNIVERSITY OF MICHIGAN  
LAW SCHOOL  
HUTCHINS HALL  
ANN ARBOR, MICHIGAN 48109-1215

RICHARD D. FRIEDMAN  
Alene and Allan F. Smith Professor of Law

TELEPHONE: (734) 647-1078  
E-MAIL: [rdfrdman@umich.edu](mailto:rdfrdman@umich.edu)

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I understand that Brigid Fitzpatrick is applying to you for a clerkship. I think very highly of her and am delighted to recommend her. She's terrific.

Brigid grew up in Novi, Michigan, right near Ann Arbor; her Dad has worked for GM for years. She went to this University for college, did very well, and continued here for law school.

Brigid has been a standout in our school; she has not had a single grade out of the A range. She was a student in my Evidence class in her third semester, and *the* outstanding student in the class. She was excellent in class sessions – consistently prepared and deeply engaged in the material. I always knew she would give a well-considered, on-point answer to my questions, and she asked good ones of her own. I gave three quizzes and a final that had both essays and a multiple-choice section. She did very well on the multiple choice, with the second highest score in the class, and had the best scores both on the quizzes and on the final-exam essays. Her totals were a little bit higher than those of a student in the class who has a GPA over 4.0 (and to whom I'd given an A+ in Civ Pro), and nobody else was very close. Bridget's superb performance in my class was in keeping with the record she has compiled throughout law school.

Indeed, she did so well in my Evidence course that afterwards I asked if she would do some research helping me to update a portion of the textbook. She readily agreed, and her work was as good and as helpful as I could have expected. So I then asked her to do some historical research, going back to the 17th and 18th centuries. She had no background in anything of the sort, but she is intellectually curious and she loves research and theory, so again she agreed and again her work was first-rate and very helpful.

Brigid was drawn to law school by the desire to advocate for low-income and historically marginalized communities, and she has spent a great deal of time in a wide variety of public-interest activities. But she is one of those rare students who loves all of law school, and as her historical work for me demonstrates, she enjoys engaging in any legal issue, no matter how unfamiliar it may be to her initially. And she is an excellent writer, with a talent for clear and nuanced explanation. She has made good progress on a law-journal Note on a topic on T visas for victims of human trafficking; because she has broad peripheral vision, she is including a comparative element. Brigid says she may be interested in academia down the line, and if she goes that route her intellectual firepower and curiosity and her writing ability make her a very good bet to succeed.

Brigid is personally pleasant, modest, and professional. I have enjoyed working with her, and I think any judge will as well. I am confident that, whatever direction Brigid chooses to take her career, she will make her mark. But first she will be a great law clerk.

If I can tell you anything more about Brigid, please do not hesitate to write or call. Meanwhile, thanks for your kind consideration.

Sincerely,

Richard D. Friedman

Richard Friedman - [rdfrdman@umich.edu](mailto:rdfrdman@umich.edu) - 734-647-1078

UNIVERSITY OF MICHIGAN LAW SCHOOL  
625 South State Street  
Ann Arbor, Michigan 48109

May 26, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in enthusiastic support of Brigid Fitzpatrick's application for a judicial clerkship.

I first had the pleasure of teaching Brigid in my Civil Procedure course during the Fall 2021 semester. Brigid's intelligence and thoughtfulness were immediately apparent. Over the course of the semester, their intellectual curiosity and enthusiasm for legal doctrine became apparent as well. Brigid's comments and questions greatly enriched our classroom discussions, and they were wonderfully judicious about their participation, saving their more esoteric questions for office hours. Brigid came to office hours frequently, and I enjoyed our conversations there immensely.

I was delighted to have the opportunity to work with Brigid again in my seminar on Sexual Orientation, Gender Identity, and the Law during the Winter 2023 semester. Brigid again made wonderful contributions to our class discussions, and it was clear that they had developed a deep and wide knowledge of the law over the two years since I'd last taught them. I was especially impressed with the way that Brigid referred back to other students' comments, not only absorbing and reflecting upon what others had said, but also building upon those earlier comments with sophistication and nuance.

The students in my seminar were required to complete a substantial writing project, and Brigid knocked theirs out of the park. Brigid chose a project, from a list of options that I provided, about a particular set of Michigan statutes and legislative proposals. In less capable hands, the final product could have been a dry list of items, presented without analysis or explanation. Instead, Brigid produced a well-organized, beautifully written, and wonderfully informative paper. It can be difficult for law students to balance the need to be precise with the need to be thorough, but Brigid struck that balance perfectly. Their efforts earned them an A+, which is a grade that I had not awarded to a student in that seminar in several years.

In sum, I have no doubt that Brigid will be an excellent clerk, and I support their application without hesitation or qualification. Please feel free to contact me if you have any questions about their candidacy.

Sincerely,

Maureen S. Carroll

Maureen Carroll - msclaw@umich.edu - 734-764-0687



**MICHIGAN LAW**  
**UNIVERSITY OF MICHIGAN**  
625 South State Street  
Ann Arbor, Michigan 48109

Luis C.deBaca  
Ambassador (ret.)  
Professor from Practice

May 31, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to enthusiastically recommend Brigid Fitzpatrick for a judicial clerkship in your chambers. Brigid is a rising 3L at Michigan Law who was in my Criminal Law class. Brigid demonstrated the highest merit in assignments and on the final examination as well as in classroom interventions and interactions with counterparts. I am convinced Brigid will thrive in a judicial environment and will be a credit to your chambers; I enthusiastically recommend this talented young lawyer-to-be and encourage you to join those of us at Michigan Law who have been lucky enough to work with Brigid.

Brigid Fitzpatrick is a quiet superstar. If you are looking for clerks who combine a rapid-fire analytical legal mind with a reassuring manner that furthers collaboration, Brigid would be a perfect fit.

I have had the opportunity to observe Brigid Fitzpatrick's intellect and interpersonal skills over the last two years. Brigid of course has outstanding grades, at a law school with a very tough grading policy. Standing out in my class not only through an ability to understand not only the black letter of Criminal Law but also being able to confront how the justice system is propelled by or in conflict with the Purposes of Punishment and society's competing interests in security and personal freedom, Brigid was noteworthy for earning one of the few A grades that I assigned. Always prepared and thinking of next level questions, Brigid navigated the classroom and the often upsetting fact patterns of criminal law with an inquisitive spirit that neither backed away from tough discussions nor crossed the line into "gunning." I was frankly not surprised when I unmasked my blind grades to find Brigid exactly where I had expected: standing out amongst a very talented group of peers. But for this outstanding student such a grade is almost de rigueur – Brigid has earned the Certificate of Merit (for the highest grade) in both 1L and upper-level courses.

I don't want to lend the impression that Brigid is simply a grade machine. Passionate about service, Brigid has taken on tough practice areas ranging from farmworker legal services to exoneration/innocence work. Brigid harnesses Spanish skills and a keen legal intellect on behalf of these marginalized and often-ignored members of our society; it has been inspiring to see Brigid live the values (justice, access, restoration, balancing) that we discussed in CrimLaw – values that to many classmates appeared to be a frustrating detour from the rules as opposed to the driving force of criminal law as a manifestation of societal values and norms.

To that end, I am particularly enthusiastic about how Brigid approached the research project we worked together on this semester. When we first discussed working on a topic concerning service regimes for human trafficking victims I was glad to see that Brigid was willing to push to the next level on assessing how states respond to crimes of power. Brigid identified foreign jurisdictions to place in conversation with the US victim care scheme, especially how it treats undocumented immigrants who may have been held in contemporary forms of enslavement. By looking at the United Kingdom, Italy, and the Netherlands, Brigid was able to undertake a comparative law project in destination countries with similar economies, but different legal systems. As is the United States, these countries are all signatories to the United Nations anti-trafficking protocol, and Italy, Holland and the UK are governed by the EU anti-tracking trafficking Directive (despite Brexit, Britain has continued its own collaborative, focus with Europe on human trafficking law and policy).

Brigid's work on this project has been exemplary. The care with which Brigid has analyzed the logics and operation of the victim protection schemes in different legal and political contexts is impressive. Having set up much of the US victim-services approach during my time in government and having negotiated with the EU and the countries in question in my diplomatic role, I was struck by how Brigid as an arms-length legal researcher was able to quickly grasp the working of the regimes in a way that rang true given my personal involvement with the systems. The resulting recommendations will be useful to my policy and practice counterparts, and the article that Brigid will publish from this work will be an important contribution.

I'm sure you have gotten the sense by now how enthusiastic I am about what Brigid Fitzpatrick will bring to the practice of law. I am excited about this trajectory because I am convinced that Brigid will be a strong voice and a compassionate advocate for justice. Accordingly, and without reservation, I strongly urge you to join us in seeing the up-sides of this stellar candidate and to

Luis C.deBaca - ldebaca@umich.edu - 734-647-4209

select Brigid Fitzpatrick for a clerkship. If you have any further questions, please contact me at ldebaca@umich.edu or 703.470.1171.

Sincerely,

Luis C.deBaca

U.S. Ambassador (ret.)  
Professor from Practice

Luis C.deBaca - ldebaca@umich.edu - 734-647-4209

**Brigid Fitzpatrick**

45751 Bristol Circle, Novi MI 48377  
248-946-1600 • brigidf@umich.edu

This is an excerpt of a memo that I wrote during my summer internship at Farmworker Legal Services, which I was given permission to use. It is entirely my work and has not been edited by anyone other than myself. I was asked to analyze whether a client might be eligible for a U visa, for victims of crimes, or a T visa, for victims of human trafficking. I have redacted the client and employer's names and removed the "Facts" section to protect the client's confidentiality. I have also removed some sections of the analysis for length.

## SUMMARY

This is an excerpt of a memo which analyzes whether a client who was originally from Mexico and who worked as a farmworker on an H-2A visa (hereafter referred to as “Client”) could be eligible for a U or a T visa, which are defined below. Client came to the U.S. to work on an orchard picking fruit. The hours he was expected to work were much longer than he expected, and his passport was confiscated soon after he arrived, preventing him from leaving. This memo concludes that, based on his experiences, Client may be able to demonstrate eligibility for either the U or the T visa.

## DISCUSSION

Client is likely eligible for a U visa, but it would be more difficult for him to prove that he is eligible for a T visa. A U visa is a set aside for victims of certain qualifying crimes who have suffered physical or mental abuse and who have been or would be helpful to law enforcement. A T visa is for victims of severe trafficking in persons who are in the U.S. because of that trafficking, who have been or would be helpful to law enforcement, and who would suffer extreme hardship involving unusual or severe form if they were not allowed to stay in the United States. Because of the high bar imposed by the T visa’s extreme hardship requirement, Client is more likely to be able to prove that he is eligible for a U visa than a T visa, but we will likely want to do further facts investigation either way, and additional facts may change this analysis.

### I. U-VISA ELIGIBILITY

#### a. Qualifying Criminal Activity

##### *Fraud in Foreign Labor Contracting*

One qualifying criminal activity under the U visa statute is fraud in foreign labor contracting. 8 CFR § 214.14(a)(9). 18 U.S.C. § 1351 defines fraud in foreign labor contracting as

(1) recruiting, soliciting, or hiring a person outside of the United States for purposes of employment in the United States (2) by means of materially false or fraudulent pretenses, representations or promises regarding that employment (3) knowingly and with intent to defraud. 18 U.S.C. § 1351; see also United States v. Bart, 888 F.3d 374, 379 (8th Cir. 2018).

Based on statements from clients and the job order given to us, we likely have a strong case that Employer committed fraud in foreign labor contracting. First, Employer clearly did hire Client from outside the United States for purposes of employment within the United States. Client is from a foreign country and learned about this job opportunity while in that foreign country. He was put in contact with Supervisor, who interviewed and hired Client as an H-2A worker.

Further, Employer's representations regarding that employment were materially false. On the job order, Employer stated that workers would work six hours per day, six days a week, and that they wouldn't be expected to work Sundays. In reality, Client was working twelve hours per day Monday through Saturday, and ten hours per day on Sundays. Although the job order stated that workers may be asked to work more hours than what was listed, it also stated that they would not be required to work additional time. However, it seems that Client and other workers were in fact pressured to work more hours than what was listed, with Client stating that workers once attempted to leave an hour early to do laundry and that the orchard owner made them continue working. Further, Client was paid less than he was told he would be. The job order states that he would be paid \$14.72 an hour or \$30 per box of apples picked. Client stated that he believed he was paid \$113 per day or \$20 per box of apples picked, and he said he would sometimes have to return part of this to his employer if they decided he was not productive enough. If we can prove this to be the case, we would likely be able to prove that Employer's

representations were materially false; however, we do not currently have paystubs that support this.

Finally, it seems likely that Employer made these representations knowingly and with intent to defraud, although we may want more evidence to reach this conclusion. As Supervisor was the one who initially interviewed Client and made false representations about the conditions of the work, and he was the one to clock the employees' hours, it seems very likely that he both intentionally and knowingly defrauded people in order to encourage them to work for Employer. Further, it's likely that he had a personal stake in doing so, as Client stated in his intake that some workers paid Supervisor when they arrived in the United States. Further, Client said in his intake that he complained to both Supervisor and the owner of the orchards that the terms of the contract were different from the hours that they were working, so it is almost certain that they were aware that the terms of the contract were a misrepresentation of the actual work being done.

#### *Involuntary Servitude*

Another qualifying criminal activity under the U visa statute is involuntary servitude. 8 CFR § 214.14(a)(9). In Kozminski, the Supreme Court defined involuntary servitude as a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process, and that involuntary servitude does not encompass psychological coercion. United States v. Kozminski, 487 U.S. 931 (1988).

The Trafficking Victims Protection Act of 2000 expanded this definition by defining involuntary servitude as “any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious physical harm or restraint; or the abuse or threatened abuse of the legal system.” In

Bradley, the First Circuit Court of Appeals agreed that “[I]f a person is compelled to labor against his will by any one of the means prohibited by the forced labor statute, such service is forced, even if he is paid or compensated for the work.” United States v. Bradley, 390 F.3d 145, 154 (1st Cir. 2004).

The threat of deportation may fall within the types of legal coercion referenced by the Supreme Court and by the Victims Protection Act of 2000 in their definitions of involuntary servitude. In Kozminski, the Supreme Court contemplated that, “threatening . . . an immigrant with deportation could constitute the threat of legal coercion that induces involuntary servitude.” Kozminski, 487 U.S. at 948; see also Kiwanuka v. Bakilana, 844 F. Supp. 2d 107 (D.C. Dist. 2012) (holding that where an employee’s passport was confiscated upon arrival and she was threatened with deportation if she stopped working, the employment conditions constituted involuntary servitude).

Here, Employer’s confiscation of Client’s passport and threats of deportation likely amount to abuse of the legal system constituting involuntary servitude. Soon after arriving in the United States, Employer asked all the workers for their passports and voting ID card. Initially, he said that the company just wanted to make copies and would return them, but Efrain later said that they would not be returned until the workers finished their contract and that they should not leave without permission. He told them that if they leave, police or immigration officials could arrest them. This is not a case of an employer merely warning employees of legal realities, as Employer created the conditions in which the workers could be detained or deported by taking their documentation. Further, Client did feel as though he was unable to leave as a result of these threats. He was afraid of being deported, and although he wanted to quit and asked for his passport multiple times, he felt that he could not leave because he did not have his passport.

Therefore, Client was threatened by abuse of the legal system which gave him no alternative but to continue working or risk deportation, amounting to involuntary servitude.

**b. Physical or Mental Abuse**

In addition to proving that a qualifying crime occurred, Client must be able to demonstrate that substantial physical or mental abuse was suffered as a result of being a victim of the qualifying crime. Courts will consider factors such as the nature of the injury suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim. Although no single factor is considered a prerequisite, the existence of one or more factors also does not create a presumption of substantial physical or mental abuse. 8 C.F.R. § 214.214(b)(1).

Administrative agencies have quite a bit of discretion on this factor. In Garcia v. Audubon Cmty. Mgmt., LLC, the court held that the plaintiffs' showing that they suffered physical harm from lack of nourishment and shame from inability to purchase food was sufficient to demonstrate substantial physical or mental abuse. Garcia v. Audubon Cmty. Mgmt., LLC, No. 08-1291, 2008 U.S. Dist. LEXIS 31221, at \*11-\*12 (E.D. La. Apr. 15, 2008). However, in Bazaldua-Hernandez v. Rodriguez, the court affirmed the AAO's decision to deny the plaintiff's U visa application, because he could not prove that he suffered physical harm, his diagnosed PTSD and generalized anxiety were also related to other factors beyond his victimization, and his petition was made 10 years after his victimization. Bazaldua-Hernandez v. Rodriguez, No. EDCV 15-1383-JGB, 2016 U.S. Dist. LEXIS 149283, at \*13 (C.D. Cal. Oct. 26, 2016).



Here, it will likely be difficult to prove that Client suffered substantial mental or physical abuse with the facts that we currently have. Client did state in his screening that he suffered mild depression, fear, and loneliness as a result of his victimization. However, this alone would probably not be enough to prove substantial mental abuse. He also states that he barely slept because of the long hours that they were forced to work, a direct result of both the fraud in foreign labor contracting and of the involuntary servitude. This could help to prove substantial physical abuse. Further, he said that they were often rushed taking lunch breaks and that they were only able to go grocery shopping when the supervisor allowed them to – if he was deprived of food as a result of either of these, that also could help prove physical abuse. It could be helpful that Client talked to family, friends, and his pastor about the situation, as they could submit letters describing any changes in Client’s mental state. If Client underwent a psychological evaluation that proved that he has ongoing mental health issues as a result of the abuse he suffered, that would help make a stronger case. However, without any documentation and because of the short duration of the infliction of the harm, it would likely be difficult to get this to the level of substantial physical and mental abuse.

## **II. T-VISA ELIGIBILITY**

### **a. Labor Trafficking**

In order to be eligible for a T visa, the applicant must have been the victim of a severe form of trafficking in persons. Under federal law, this is sex trafficking or labor trafficking. Labor trafficking is defined as when someone recruits, harbors, transports, provides, or obtains a person for labor or services through the use of force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery.

An employer making false representations about employment conditions in order to hire someone from outside the U.S. and then threatening them with abuse of the legal system amounting to involuntary servitude so that they are unable to leave constitutes labor trafficking. In Ouloch v. Orina, the court describes the case of a plaintiff who accompanied her employer to the United States after signing a contract stating that she would make \$8.00 an hour and receive overtime pay and who was then only paid \$150 a month. Her passport was confiscated by the defendant and she was not allowed to leave the house unescorted, and the defendant threatened her well-being. The plaintiff was granted a T visa, as this was determined to be labor trafficking. Oluoch v. Orina, 101 F. Supp. 3d 325, 328 (S.D. N.Y. 2015). Similarly, in Lipenga v. Kambalame, a woman who was recruited to come to the U.S. with the promise of fair working conditions and compensation, whose passport was confiscated, and whose employer threatened to have her deported if she stopped working was granted a T visa. Lipenga v. Kambalame, 219 F. Supp. 3d 517, 523-524 (D. Md. 2016).

Here, Client was recruited and hired under materially false claims and was then threatened with deportation if he left. Employer stated that workers would work for six hours a day six days a week, and that they may be requested but not required to work longer hours. However, Client was instead expected to work 12 hours a day Monday through Saturday and 10 hours a day on Sundays. When workers attempted to leave early, in order to go to the laundromat, they were berated by the orchard owner and told to stay. Further, he was told that he would be paid \$14.72 per hour or \$30 per box of apples, and he was instead paid \$20 per box of apples and said that he received \$113 per day. As mentioned above, we would likely want to try to find paystubs or other evidence that supports Client's claims as to how much he was making.

Further, as in the Ouloch and Lipenga cases, Client's passport was confiscated shortly after arrival. He was told that his passport would not be returned until he finished the contract. He was also told on more than one occasion that he would be arrested by the police or immigration if he left. Client genuinely felt as though he was unable to leave because of these threats. He wanted to quit and return to his home country, and he asked for his passport to be returned to him multiple times, but his employer refused to return his passport. Without any identification, he was afraid to stop working or leave unaccompanied. Because the employer created conditions under which he could be detained or deported and Client felt as if he had no other choice but to continue working, this constitutes legal coercion which obtained Client's involuntary servitude.

**b. Extreme Hardship**

The applicant must also be able to demonstrate that they would face extreme hardship involving unusual and severe harm if they were removed from the United States. This is a higher standard than mere extreme hardship and cannot be based solely on economic detriment or disruption to social and economic opportunities. 8 C.F.R. § 214.11(i)(1). Factors that may be considered include age and personal circumstances; serious physical or mental illness; the nature and extent of the physical and psychological consequences of the trafficking; impact of loss of access to the U.S. criminal justice system for purposes relating to the crimes perpetrated against the applicant; a reasonable expectation that the applicant would be severely penalized for being a victim of trafficking in the country that they return to; the likelihood of revictimization and the ability or willingness of foreign authorities to protect the applicant; the likelihood of harm that the trafficker would cause the applicant in the foreign country; and the likelihood that the applicant's safety would be threatened by the existence of civil unrest or armed conflict. Suzanne

B. Seltzer et. al., T Visa Manual: Identification and Legal Advocacy for Trafficking Survivors A-12 (4th ed. 2018). These considerations don't need to be connected to the trafficking; for example, if the applicant has developed a medical condition that can be better treated in the U.S., that would be a valid example of extreme hardship. Id. Further, while economic need is not relevant, if economic issues may lead an applicant to being re-trafficked, that is a relevant factor. Id.

Here, it is unlikely that we have sufficient evidence to demonstrate extreme hardship involving unusual and severe harm. We may be able to make the case that returning to his country of origin would put Client in an economic position that would leave him likely to be subject to labor trafficking again. However, this on its own is unlikely to be enough. If there were evidence that Client has a physical or psychological condition in need of treatment in the U.S. or that Client is at risk of facing retaliation in his country of origin, that would significantly contribute to the likelihood of proving extreme hardship.

## CONCLUSION

Client may be eligible for a U visa, but with the information that we currently have, he is unlikely to be eligible for a T visa. To obtain a U visa, it seems likely that he could prove he suffered at least one eligible crime – fraud in foreign labor contracting or involuntary servitude. He may also be able to prove physical or mental abuse, although we may want to gather more documentation or statements from friends and family in his home country. To obtain a T visa, he can likely prove that he was a victim of labor trafficking, but with the evidence that we currently have, it would be difficult for him to prove that he would suffer extreme hardship if he was removed from the United States.

## Applicant Details

First Name	Eliana
Last Name	Fleischer
Citizenship Status	U. S. Citizen
Email Address	<a href="mailto:efleischer@uchicago.edu">efleischer@uchicago.edu</a>
Address	<div> <div>Address</div> <div> <div>Street</div> <div>5454 S Shore Dr</div> <div>City</div> <div>Chicago</div> <div>State/Territory</div> <div>Illinois</div> <div>Zip</div> <div>60615</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	8479898579

## Applicant Education

BA/BS From	University of Richmond
Date of BA/BS	June 2020
JD/LLB From	The University of Chicago Law School
	<a href="https://www.law.uchicago.edu/">https://www.law.uchicago.edu/</a>
Date of JD/LLB	June 1, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	The University of Chicago Law Review
Moot Court Experience	No

## Bar Admission

## Prior Judicial Experience

Judicial Internships/ Externships	No
--------------------------------------	----

Post-graduate Judicial Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Davidson, Adam  
davidsona@uchicago.edu

Zunkel, Erica  
ezunkel@uchicago.edu  
773-702-9494

Rappaport, John  
jrappaport@uchicago.edu  
773-834-7194

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Dear Honorable Judge Walker,

I am enthusiastically submitting my application for a clerkship position in your chambers. I am an intellectually curious and hardworking rising 3L at the University of Chicago Law School. I believe I would make a strong addition to your team.

My determination to use the law to advance the public interest drives me to look for innovative solutions to difficult problems. In college, I wrote my honors thesis on police accountability, which surveyed Fourth Amendment law and qualified immunity to understand why the police are so often legally untouchable. I continued to study this subject in law school and wrote my Law Review comment proposing a precedent-bound mechanism for widening the scope of liability under the qualified immunity doctrine. I also pursued this work outside of the classroom: I have volunteered at the Torture Inquiry and Relief Commission and worked at the MacArthur Justice Center and Loevy & Loevy. In each role, I advanced the mission of the organization in every way I could, including poring over discovery documents, reading old transcripts, and writing research memos to inform motions.

I am adept at legal research in a condensed time frame to produce work applying that law on behalf of a client's needs. During my second internship last summer at the Public Defender Service in Washington, DC, I was entrusted with writing the first draft of a motion for severance in a far-reaching conspiracy case that was unique for that district. I familiarized myself with the evidence, researched conspiracy law in the district, and completed a working motion to sever defendants and charges. I also focused on displaying our client's individuality to show that he was not simply one of many young Black defendants, but his own person entitled to his own trial.

Additionally, I excel at working in a team environment to accomplish a common goal. In the Federal Criminal Justice Clinic, I worked with a team of my peers and social work students to craft and write a motion for compassionate release, complete with our client's life story, an accounting of the sexual abuse scandal in the prison where she was incarcerated, and a mental health treatment plan for her release. Our debate over legal arguments and collaboration in editing each other's writing paid off: the prosecutor chose not to oppose our motion, and the judge released our client three years early.

It would be a privilege to join your chambers for the 2024 term. I am delighted at the prospect of returning to Virginia. I know that my diligence in research, precise writing, and dedication to the law as a mechanism for justice can help advance your important work. Thank you for your time and consideration.

Sincerely,  
Eliana Fleischer

## Eliana Fleischer

5454 S Shore Dr, Chicago, IL 60615 | (847) 989-8579 | efleischer@uchicago.edu

### EDUCATION

**The University of Chicago Law School**, Chicago, Illinois, Candidate for J.D., June 2024

- Journal:* THE UNIVERSITY OF CHICAGO LAW REVIEW, Staff Member
- Activities:* American Constitution Society, Co-Director of Programming 2022-2023; Defenders; Jewish Law Students Association; Latinx Law Students Association; Outlaw
- Awards:* Allen M. Singer Scholarship; Norval Morris Public Interest Fellowship; Equal Justice America Fellowship
- Publications:* *Stating the Obvious: Departmental Policies as Clearly Established Law*, 90 U. CHI. L. REV. (forthcoming 2023); *Judging the Referee: How Judicial Standards of Review Can Improve Soccer's Video Assistant Referee System*, U. CHI. L. REV. ONLINE (Nov. 23, 2022)

**University of Richmond**, Richmond, Virginia, B.A. in Leadership Studies and Political Science, May 2020

- Honors:* Boatwright Scholar (Full tuition merit award); Magna Cum Laude; Dean's List; James MacGregor Burns Award (Highest student honor in Leadership Studies); Westhampton College Distinguished Leadership Award; Frederic M. Jablin Award for Undergraduate Research; Omicron Delta Kappa (National Leadership Honor Society); Pi Sigma Alpha (National Political Science Honor Society)
- Thesis:* *A License to Kill: The Institutional Failure of the Legal System to Hold Police Accountable*
- Abroad:* Emmanuel College, University of Cambridge, Cambridge, England, Summer 2018

### EXPERIENCE

**Loevy & Loevy**, Chicago, IL, *Summer Associate*, May 2023 – August 2023

- Conduct legal research and write substantive motions
- Review and catalog evidence from criminal convictions for use in a wrongful conviction lawsuit

**Federal Criminal Justice Clinic**, Chicago, IL, *Clinical Student*, September 2022 – May 2023

- Spearheaded and composed the narrative section of a successful compassionate release motion for a client who was sexually abused in prison
- Reviewed and catalogued criminal trial transcripts, prison discovery documents, media reports, and congressional testimony for use in the compassionate release motion
- Drafted public landing page and developed strategic plan for publicizing the Clinic's groundbreaking Freedom Denied report detailing the pretrial jailing crisis in the federal judiciary

**The Public Defender Service for the District of Columbia**, Washington, DC, *Intern*, August – September 2022

- Conducted legal research to show prosecutorial bad faith in charging decisions
- Analyzed discovery material and strategized legal arguments for a case with multiple defendants
- Assisted in drafting a multi-part severance motion with comprehensive legal and factual arguments

**Roderick and Solange MacArthur Justice Center**, Chicago, Illinois, *Intern*, June – August 2022

- Assisted in drafting complaints and pre-trial motions for prisoner's rights, wrongful conviction, and police accountability cases
- Conducted research on legal standards for police activity and evidentiary standards to supplement motions and prepare for trial
- Reviewed opposing parties' discovery production for documents most salient to proving plaintiffs' claims

**State of Illinois Torture Inquiry and Relief Commission**, Chicago, Illinois, *Volunteer*, June 2020 – June 2022

- Compiled case files of Cook County court transcripts for review by the Commission to investigate allegations of torture by the Chicago Police Department

**Raise the Floor Alliance**, Chicago, Illinois, *Paralegal*, July 2020 – July 2021

- Conducted legal research for class action workplace discrimination cases, drafted demand letters to employers, and filed documents with state and federal court entities
- Served as primary point of contact with English and Spanish-speaking clients





Name: Eliana R Fleischer  
Student ID: 12329136

University of Chicago Law School

Academic Program History

Program: Law School  
Start Quarter: Autumn 2021  
Current Status: Active in Program  
J.D. in Law

External Education

University of Richmond  
Richmond, Virginia  
Bachelor of Arts 2020

Beginning of Law School Record

		Autumn 2021		
Course	Description	Attempted	Earned	Grade
LAWS 30101	Elements of the Law Lior Strahilevitz	3	3	176
LAWS 30211	Civil Procedure Emily Buss	4	4	182
LAWS 30611	Torts Adam Chilton	4	4	177
LAWS 30711	Legal Research and Writing Alison Gocke	1	1	180

		Winter 2022		
Course	Description	Attempted	Earned	Grade
LAWS 30311	Criminal Law Jonathan Masur	4	4	177
LAWS 30411	Property Aziz Huq	4	4	182
LAWS 30511	Contracts Douglas Baird	4	4	178
LAWS 30711	Legal Research and Writing Alison Gocke	1	1	180

		Spring 2022		
Course	Description	Attempted	Earned	Grade
LAWS 30712	Legal Research, Writing, and Advocacy Alison Gocke	2	2	183
LAWS 30713	Transactional Lawyering Joan Neal	3	3	176
LAWS 43273	Emotions, Reason, and Law Martha C Nussbaum	3	3	179
LAWS 44201	Legislation and Statutory Interpretation Ryan Doerfler	3	3	177
LAWS 47201	Criminal Procedure I: The Investigative Process John Rappaport	3	3	179

Summer 2022

Honors/Awards  
The University of Chicago Law Review, Staff Member 2022-23

Autumn 2022

Course	Description	Attempted	Earned	Grade
LAWS 46101	Administrative Law Thomas Ginsburg	3	3	180
LAWS 46501	Federal Criminal Law Sharon Fairley	3	3	177
LAWS 50311	U.S. Supreme Court: Theory and Practice Meets Writing Project Requirement	3	3	182
Designation:				
Sarah Konsky Michael Scodro				
LAWS 90221	Federal Criminal Justice Clinic Erica Zunkel Alison Siegler Judith Miller	1	0	
LAWS 94110	The University of Chicago Law Review Anthony Casey	1	1	P

Winter 2023

Course	Description	Attempted	Earned	Grade
LAWS 40101	Constitutional Law I: Governmental Structure David A Strauss	3	3	177
LAWS 48214	Race and the Law Adam Davidson	3	3	182
LAWS 53365	LGBT Law Camilla Taylor	3	0	
LAWS 90221	Federal Criminal Justice Clinic Erica Zunkel Alison Siegler Judith Miller	1	0	
LAWS 94110	The University of Chicago Law Review Anthony Casey	1	1	P



Name: Eliana R Fleischer  
Student ID: 12329136

University of Chicago Law School

		Spring 2023			
Course	Description	Attempted	Earned	Grade	
LAWS 40301	Constitutional Law III: Equal Protection and Substantive Due Process Aziz Huq	3	3	182	
LAWS 41601	Evidence John Rappaport	3	3	181	
LAWS 47301	Criminal Procedure II: From Bail to Jail Alison Siegler	3	3	177	
LAWS 90221	Federal Criminal Justice Clinic Erica Zunkel Alison Siegler Judith Miller	1	0		
LAWS 94110	The University of Chicago Law Review Req Meets Substantial Research Paper Requirement	1	1	P	
Designation:	Anthony Casey				

End of University of Chicago Law School



## Key to Transcripts of Academic Records

**1. Accreditation:** The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit <http://cs.uchicago.edu/policies/disclosures>.

**2. Calendar & Status:** The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

**3. Course Information:** Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

**4. Credits:** The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

### 5. Grading Systems:

Quality Grades		College & Graduate		Business	Law
Grade		College & Graduate			
A+	4.0	4.33			
A	4.0	4.0			186-180
A-	3.7	3.67			
B+	3.3	3.33			
B	3.0	3.0			179-174
B-	2.7	2.67			
C+	2.3	2.33			
C	2.0	2.0			173-168
C-	1.7	1.67			
D+	1.3	1.33			
D	1	1			167-160
F	0	0			159-155

### Non-Quality Grades

**I Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).

**P Pass (non-Law):** Mark of I changed to P (Pass). See 8 for Law IP notation.

**NGR No Grade Reported:** No final grade submitted

**P Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.

**Q Query:** No final grade submitted (College only)

**R Registered:** Registered to audit the course

**S Satisfactory**

**U Unsatisfactory**

**UW Unofficial Withdrawal**

**W Withdrawal:** Does not affect GPA calculation

**WP Withdrawal Passing:** Does not affect GPA calculation

**WF Withdrawal Failing:** Does not affect GPA calculation

**Blank:** If no grade is reported after a course, none was available at the time the transcript was prepared.

### Examination Grades

**H Honors Quality**  
**P\* High Pass**  
**P Pass**

**Grade Point Average:** Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website:  
<http://registrar.uchicago.edu>.

**6. Academic Status and Program of Study:** The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

**7. Doctoral Residence Status:** Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a

University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

**Scholastic Residence:** the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

**Research Residence:** the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

**Advanced Residence:** the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

**Active File Status:** a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

**Doctoral Leave of Absence:** the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

**Extended Residence:** the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled *Pro Forma* does not extend the maximum year limit on registration.

**8. Law School Transcript Key:** The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+) 0.5%  
High Honors (180.5+)(pre-2002 180+) 7.2%  
Honors (179+)(pre-2002 178+) 22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P\* indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

\* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

**9. FERPA Re-Disclosure Notice:** In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar  
University of Chicago  
1427 E. 60<sup>th</sup> Street  
Chicago, IL 60637  
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website:  
<http://registrar.uchicago.edu>.

Revised 09/2016

Adam Davidson  
Assistant Professor of Law  
The University of Chicago Law School  
1111 E. 60th Street  
Chicago, IL 60637  
davidsona@uchicago.edu | 773-834-1473

June 09, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to recommend Eliana Fleischer for a clerkship in your chambers. I have gotten to know Eliana in two contexts. I advised her comment, which will be published in the University of Chicago Law Review, and I taught her in Race and the Law. In both contexts, Eliana displayed all of the makings of an excellent law clerk.

Eliana is a rigorous, creative, and practical legal thinker. All of these traits were on display as she wrote her comment, and getting the opportunity to watch her develop her comment was one of the delights of my academic year. Eliana's comment is about how police policies should be considered when evaluating qualified immunity's clearly established law prong. On one view, they shouldn't be, as courts generally think of clearly established law as limited to binding precedent. But as Eliana notes, courts around the country, including the Supreme Court, have noted, and at times seemingly relied on, the existence of a police policy when finding that the law was clearly established.

Eliana's ability to master this area of law generally was impressive, but not nearly as impressive as her ability to find a doctrinally grounded throughline in a series of cases that, from an initial reading, seemed to point in every possible direction. Eliana's solution was, in a word, elegant. She noted that while the Court had created an "obviousness" exception to the clearly established law analysis, it had been criticized for being too amorphous to be useful. Here, Eliana argues, police policies might play a role. If a constitutional violation also violated departmental policy, that could be a sign of its obviousness. After all, one reason that courts might not have clearly established law on the "obvious" cases is because most officers do not flagrantly violate their departmental policies.

Eliana's journey to this solution involved not only mastering a complex body of cases, but also navigating the ever-growing scholarly literature on qualified immunity. She attempted to account for not only how the courts have said qualified immunity operates, but also how scholars have found that the doctrine operates in practice. For example, the courts have regularly said that qualified immunity is, in part, about providing notice to government actors, but scholars have found that police are rarely taught the body of clearly established law in their jurisdiction. By contrast, police will almost always have actual notice of their department policies.

But beyond the substance of her work, Eliana has been a joy to interact with. She internalizes feedback well, but she also knows how to push back when appropriate. She is thoughtful to a fault. Her questions were often not only about finding what she thought was the best answer, but also attempting to find the answer most likely to help the most people. This ability and willingness to develop both her own view of the ideal position and to think strategically about what position might gain adherents from different audiences is a skill I have found many students struggle with. That is especially so for students like Eliana who have strong views because they are dedicated to improving the world through public interest work.

I believe that I would have enjoyed having Eliana as a co-clerk, and the combination of her acumen and her personality makes me recommend Eliana enthusiastically and unabashedly.

Sincerely,

Adam Davidson

Adam Davidson - davidsona@uchicago.edu



THE UNIVERSITY OF CHICAGO  
**THE LAW SCHOOL**  
Federal Criminal Justice Clinic

Erica Zunkel  
*Clinical Professor of Law*  
*Associate Director, Federal Criminal Justice Clinic*

T 773-702-0612  
C 510-332-1490  
ezunkel@uchicago.edu

June 12, 2023

The Honorable Jamar K. Walker  
United States District Court for the Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

**Re: Clerkship Recommendation for Eliana Fleischer**

Dear Judge Walker:

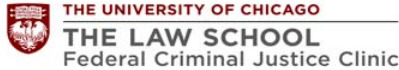
I strongly recommend Eliana Fleischer for a clerkship in your chambers. Eliana's diligence, strong research and writing skills, and the admirable level of professionalism with which she approaches all of her endeavors will make her a terrific clerk. Beyond academics, Eliana is wonderful to work with—she is earnest, kind, and devoted to the cause of lifting up all people.

I had the privilege of working closely with Eliana this year in my Federal Criminal Justice Clinic, which was the first legal clinic in the country to focus on representing indigent clients charged with federal felonies. Eliana's work has been excellent across the board. Eliana has shown a keen eye for fact development, legal research and writing, and collaborative legal work. One of Eliana's most impressive attributes is her commitment to becoming the best lawyer she can be. She routinely asks probing, interesting, and insightful questions.

Because of the demands of my Clinic's cases, we have a preference for third-year students who have more time in their schedules and who have taken advanced criminal law classes. Working in the Clinic during his second year required Eliana to juggle a full academic caseload and her other extracurricular activities, including Law Review membership, which is very demanding. Eliana flourished, and over the course of the year I asked her to do work that would ordinarily be entrusted only to our most skilled third-year students.

Eliana primary project was drafting a federal compassionate release motion on behalf of a survivor of sexual abuse at the Bureau of Prisons' (BOP) FCI Dublin women's prison. The underlying facts are horrific—our client suffered significant sexual abuse at the hands of several different correctional officers. I tasked Eliana with writing the section of our motion that outlined our client's personal experiences as well as an overview of the sexual abuse scandal at FCI Dublin and throughout the BOP. I first asked Eliana to research and organize media reports about what happened at FCI Dublin, congressional reports about sexual abuse of women in federal prisons, and BOP and court documents relating to our client's case. This involved an incredible amount of time, patience, and attention to detail, which was well suited to Eliana's strengths. She meticulously organized the information so that the entire team could make use of





it. After she completed her fact-gathering and organization, Eliana drafted the facts section of the motion. We went through several drafts, with Eliana continually refining and honing her work.

Eliana's finished product was simply outstanding. It was comprehensive, compelling, and humanizing, and it set the stage for the legal analysis that followed. Eliana was also committed to seeing her work through. She proactively reached out to me to ask how she could help to ensure that the motion was in excellent shape for filing. In addition, while working on the motion, Eliana demonstrated impeccable judgment and never hesitated to ask questions when she needed clarifying information— both great qualities for any future clerk and litigator. Eliana's work had an incredible impact: our motion was recently granted, and our client was released in late May, making it one of the first compassionate release grants for survivors of sexual abuse at Dublin in the country.

The hard work and professionalism that Eliana demonstrated on her Clinic case translated into her other Clinic activities. She was always prepared for team meetings and our Clinic seminar. She responded in a very timely fashion to emails from myself and other members of the legal team. She also worked very well with her student colleagues and other clinic supervisors.

In addition to possessing impressive legal skills, Eliana is a student who is deeply committed to advancing social justice. Eliana came to law school to be an advocate for people ensnared in the criminal justice system and for people whose rights have been violated. Last summer, she worked at the MacArthur Justice Center on police accountability cases, and at the D.C. Public Defender's Office defending indigent individuals charged with crimes. At the Law School, Eliana is involved in a number of different activities and organizations, including the American Constitution Society for which she is Co-Director of Programming, the Law Review, and the Defenders student group.

The same qualities Eliana has shown during her time in my Clinic—professionalism, hard work, integrity, and conscientiousness—are attributes that will make her a wonderful clerk, especially when combined with her strong research and writing skills. If you would like to discuss Eliana's qualifications further, please do not hesitate to call me at (510) 332-1490.

Sincerely,

A handwritten signature in blue ink, appearing to read "EZunkel".

Erica K. Zunkel  
Clinical Professor of Law  
Associate Director, Federal Criminal Justice

John Rappaport  
Professor of Law  
University of Chicago Law School  
1111 East 60th Street | Chicago, Illinois 60637  
phone 773-834-7194 | fax 773-702-0730  
e-mail : jrappaport@uchicago.edu  
www.law.uchicago.edu/faculty/rappaport

June 12, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

Eliana Fleischer, a member of the University of Chicago Law School Class of 2024, is applying for a clerkship in your chambers. It's my pleasure to submit this letter of recommendation on her behalf. Eliana has been a joy to teach. She's smart, curious, warm, and public-minded. She's a major presence in the Law School community, active in multiple student groups including the University of Chicago Law Review. She's mature and grounded, too, having worked for a year as a paralegal before matriculating at Chicago. I recommend you give her a serious look.

I made Eliana's acquaintance when she enrolled in my Criminal Procedure course in the Spring Quarter of her 1L year. Her engagement was evident from her fine performance on cold calls and her probing questions during office hours. She did well on the course exam, earning a 179—a high B+ on Chicago's rigorous curve. Subjectively, she struck me as even stronger than this. I had Eliana in class again this past quarter for Evidence. Again she stood out among her peers for her curiosity and engagement with the material. Teaching would be a pure joy if I had rooms full of Elianas every quarter. And this time, her exam performance better reflected my observations, netting her a 181—a solid A—in the class.

Eliana's record at Chicago is strong, if a little varied. Her ceiling is high, as reflected by the 182s—solid As—she earned in core classes like Civil Procedure and Property as well as more interdisciplinary offerings like Race and the Law. Particularly notable is Eliana's 183 in the Spring Quarter of her legal writing course, which would have put her near the top of her section in appellate brief-writing. It was likely these writing skills that landed her a spot on the Law School's flagship law review.

Eliana's many other activities reflect her diverse background and interests. She serves on the board of the American Constitution Society and participates as well in Defenders (a group for students interested in public defense work), the Jewish Law Students Association, the Latinx Law Students Association, and Outlaw. Much of my interaction with Eliana outside the classroom has concerned her laser-focused interest in public service. As you know, the pull of "BigLaw" can be strong, and many students who enter law school intending to do public interest work migrate to corporate law firms in the end. Eliana is serious about sticking to what she came here to do. Her 1L summer, which she split between the MacArthur Justice Center and the Public Defender Service for the District of Columbia, previews the types of work she'll likely pursue after clerking.

Eliana attributes her commitments largely to her religious upbringing. She recalls her rabbi's High Holiday sermons reminding the congregation that Jews, once enslaved, are now free—and with that freedom comes the responsibility to help those who are not yet free. Influential as well was Eliana's bilingual and bicultural upbringing. Her paternal grandparents immigrated to the United States from Argentina. Eliana's childhood memories play in a mixture of Spanish and English, as her large and tight-knit family gathered for holiday festivities at her grandparents' house.

To top things off, Eliana is a pleasure interpersonally. Her smile warms the room. She radiates a positivity that gives one hope for the future during this difficult political era. I'm confident that all who work with her will come to love her. I hope you'll take the opportunity to meet her and see for yourself.

Sincerely,

John Rappaport

John Rappaport - jrappaport@uchicago.edu - 773-834-7194

**Eliana Fleischer**

5454 S Shore Dr, Chicago, IL 60615 | (847) 989-8579 | [efleischer@uchicago.edu](mailto:efleischer@uchicago.edu)

---

This writing sample is an abridged version of my comment as written for the University of Chicago Law Review. It represents my original idea and my writing. It has received feedback from a faculty advisor and suggested edits from members of the Law Review. A complete version will be published in the University of Chicago Law Review in September 2023.



## Stating the Obvious: Departmental Policies as Clearly Established Law

*Eliana Fleischer*

### INTRODUCTION

State and federal government officers carry weapons and are authorized to use force—including deadly force<sup>1</sup>—with few safeguards to prevent mistakes and bad actions. When a government officer violates an individual's rights, the individual can sue for damages.<sup>2</sup> While this does not undo the harm the individual experienced, a successful claim can provide a monetary remedy for the harm and hold the officer accountable. However, there are significant legal obstacles to successfully bringing a case against a government officer. One of the most contentious barriers to accountability is qualified immunity.

Qualified immunity is an affirmative defense that was created to protect state and federal government officials from meritless or harassing lawsuits for performing their jobs.<sup>3</sup> Before a court will hear the merits of a case, it must first determine that the official is not immune from liability. Even if an officer violates a person's constitutional rights, the officer is entitled to qualified immunity when the violated right was not "clearly established."<sup>4</sup>

Officers undergo training and are guided by departmental policies that aim to instruct officers about proper conduct and prevent rights violations. These policies operate prospectively, and while they cannot reasonably prepare officers for every possible circumstance, they provide a rough code of conduct to which officers should adhere. But what happens when officers do not abide by their own department's policies?

For individuals, such as the family of Brian Drummond, this question is personal. Drummond had a history of mental illness, and one night he ran out of his medication.<sup>5</sup> His neighbor called the police to prevent him from injuring himself.<sup>6</sup> Drummond was unarmed and hallucinating, and the officers called an ambulance to transport him to get medical care.<sup>7</sup> But instead of waiting for the ambulance, the officers decided to take him into custody: they knocked him to the ground and cuffed his arms behind his back.<sup>8</sup> Although Drummond was not resisting, two officers knelt on his back and neck.<sup>9</sup> Drummond complained to the officers that he could not breathe. One witness said that Drummond was obviously having trouble breathing, but the officers were laughing.<sup>10</sup> An additional officer arrived, and they bound Drummond's ankles, too.<sup>11</sup> At this point, about twenty minutes after they first restrained him, Drummond lost consciousness.<sup>12</sup> As a result of the officers' actions, Drummond fell into a permanent vegetative state.<sup>13</sup>

---

<sup>1</sup> See, e.g., *Tennessee v. Garner*, 471 U.S. 1, 3 (1985) (holding that deadly force may be used when "it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others").

<sup>2</sup> See 42 U.S.C. § 1983; see also *Monroe v. Pape*, 365 U.S. 167, 187 (1961) (holding that § 1983 creates a cause of action to enforce constitutional rights against state government officials).

<sup>3</sup> *Anderson v. Creighton*, 483 U.S. 635, 638–39 (1987).

<sup>4</sup> *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

<sup>5</sup> *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d 1052, 1054 (9th Cir. 2003).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Drummond*, 343 F.3d at 1054–55.

<sup>11</sup> *Id.* at 1055.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

The officers should have known that their actions violated Drummond's rights.<sup>14</sup> Their own police department specifically trained them not to kneel on a person's back or neck for restraint, as doing so can be deadly.<sup>15</sup> Additionally, the risks of such actions were reported in a local newspaper less than two months earlier.<sup>16</sup> Despite clear evidence that the officers should have known not to restrain Drummond in the dangerous way they did, the district court judge granted the officers qualified immunity and dismissed the case.<sup>17</sup>

When an officer asserts qualified immunity, the plaintiff has to overcome the defendant's immunity defense before the case is assessed on the merits.<sup>18</sup> There is a two-part test for determining whether qualified immunity applies: "Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct."<sup>19</sup> Courts have the discretion to decide either prong of the test first.<sup>20</sup>

The second part of the qualified immunity test—the clearly established prong—is the more ambiguous of the two.<sup>21</sup> Its inclusion in the qualified immunity test is intended to protect officials from liability unless they were on notice that their conduct could clearly violate constitutional rights.<sup>22</sup> Although the Court has been clear that general constitutional principles cannot clearly establish law for the purpose of the test<sup>23</sup>—a higher level of factual specificity is required—it has not explicitly determined what makes law "clearly established." As a result, lower courts have been left to model their clearly-established-law analysis after the Supreme Court's sporadic and sometimes conflicting qualified immunity jurisprudence.<sup>24</sup>

There is substantial uncertainty about the role that departmental policies can have, if any, in the clearly established law analysis. The policies at issue in this Comment are any

<sup>14</sup> *Id.* at 1061 ("Any reasonable officer should have known that such conduct constituted the use of excessive force." (emphasis in original)).

<sup>15</sup> *Drummond*, 343 F.3d at 1061–62 ("[T]he officers received training from their own police department explaining specifically that 'when one or more [officers] are kneeling on a subject's back or neck to restrain him, compression asphyxia can result [t]hat may be a precipitating factor in causing death.'" (second and third alterations in original) (emphasis in original) (quotation marks omitted)).

<sup>16</sup> *Id.* at 1061.

<sup>17</sup> See *Drummond ex rel. Drummond v. City of Anaheim*, 8:00-cv-00243, Dkt. No. 102 (C.D. Cal. Jan. 17, 2002). The dismissal on the basis of qualified immunity was overturned at the Ninth Circuit on the grounds that the department's policies and training program provided the officers "'fair warning' that the force they used was constitutionally excessive even absent a Ninth Circuit case presenting the same set of facts." *Drummond*, 343 F.3d at 1061. On remand, the jury rendered a verdict for the officers and dismissed the case. *Drummond ex rel. Drummond v. City of Anaheim*, 8:00-cv-00243, Dkt. No. 393 (C.D. Cal. May 14, 2009).

<sup>18</sup> See Kenneth Duvall, *Burdens of Proof and Qualified Immunity*, 37 S. ILL. U. L.J. 135, 145 (2012) (finding a circuit split on the burden of proof for qualified immunity, with five circuits placing the burden on the defendant, five circuits placing the burden on the plaintiff, and two circuits splitting the burden of persuasion by step); Aisha Green, *Comparing Dadd v. Anoka County with Corbitt v. Vickers: Why Defendants Should Bear the Burden of Establishing Qualified Immunity in a Motion to Dismiss*, 70 AM. U. L. REV. 2091, 2108–13 (2021) (describing a circuit split between the Eighth Circuit and the Eleventh Circuit with regard to allocating the burden of establishing qualified immunity).

<sup>19</sup> *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (citing *Harlow*, 457 U.S. at 818).

<sup>20</sup> *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

<sup>21</sup> Karen Blum, Erwin Chemerinsky & Martin A. Schwartz, *Qualified Immunity Developments: Not Much Hope Left for Plaintiffs*, 29 Touro L. REV. 633, 653 (2013) ("[T]he more difficult task is figuring out what is required to make the law 'clearly established.'").

<sup>22</sup> *Creighton*, 483 U.S. at 639–40 (explaining that officials must reasonably be able to "'anticipate when their conduct may give rise to liability for damages' . . . in the light of pre-existing law the unlawfulness must be apparent") (quoting *Davis v. Scherer*, 468 U.S. 183, 195 (1984)).

<sup>23</sup> *Id.* at 639 (explaining that, for example, the Due Process Clause does not serve to clearly establish the right to due process because "if the test of 'clearly established law' were to be applied at this level of generality . . . [qualified immunity] would be transformed from a guarantee of immunity into a rule of pleading").

<sup>24</sup> Blum et al., *supra* note 21, at 653 (explaining that "[o]ne problem with negotiating the clearly-established-law terrain" is the Court's "mixed signals as to what is sufficient to give officials notice that certain conduct is unconstitutional").

rules or training materials that provide guidance to officers, as “police policies and training have [long] been understood as a means of limiting officer discretion.”<sup>25</sup>

This Comment proposes that courts consider these nonbinding mechanisms for limiting discretion as clearly established law for the purpose of qualified immunity.<sup>26</sup> Departmental policies offer a prospective, informed assessment of how reasonable officers should act. For this reason, courts should consult them as indicators of what conduct is clearly established to be wrongful.

\* \* \* Part II describes the current consideration of departmental policies in the clearly established law analysis. It provides an overview of the conflicting messages about the use of policies from the Supreme Court and details how lower courts apply policies when evaluating qualified immunity. Additionally, it describes the legal fiction inherent in the clearly established law inquiry and posits that some lower courts cite policies as a way to address this legal fiction. Part III offers a solution that incorporates policies into the current doctrinal framework—without requiring a change in precedent—as an objective measure for determining when an officer’s violation of a person’s rights was obvious. Officers who obviously violate rights and should have known better are not entitled to qualified immunity.<sup>27</sup> Ultimately, this Comment explains how departmental policies can be informative in resolving close cases where “obviousness” may be up for debate, which also functions to realign the doctrine with its stated purpose.

## I. ORIGINS AND JUSTIFICATIONS OF QUALIFIED IMMUNITY

\* \* \*

## II. CURRENT STATE OF THE LAW

While the purpose of the clearly established law prong is clear, the application of this test is unsettled.<sup>28</sup> The test asks whether the constitutional right was clearly established at the time of the conduct, but the Supreme Court has never definitively determined what counts as clearly established law.<sup>29</sup> The Court has given conflicting information concerning the use of policies in this analysis; it has both disavowed the use of policies as clearly established law and used policies to support its holdings.<sup>30</sup> Because of this contradictory treatment at the Supreme Court, there is no consensus in lower courts about how to consider policies in the qualified immunity analysis.<sup>31</sup> Part II.A discusses the Supreme Court’s treatment of policies as clearly established law, and Part II.B provides an overview of whether and how district and appellate courts include policies in their qualified immunity analyses. This Part describes the outer bounds of where policies can fit into the existing

<sup>25</sup> Ingrid V. Eagly & Joanna C. Schwartz, *Lexipol’s Fight Against Police Reform*, 97 IND. L.J. 1, 4 (2022).

<sup>26</sup> This Comment’s definition of policies does not include rules or regulations that create binding obligations or carry the force of law, such as statutes. Additionally, this Comment solely concerns individual officer liability under § 1983 or *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). An in-depth analysis of the effect that considering policies in the qualified immunity analysis could have on claims against local governments under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), is outside the scope of this Comment.

<sup>27</sup> *Hope v. Pelzer*, 536 U.S. 730, 741 (2002).

<sup>28</sup> See Carolyn Shapiro, *The Limits of the Olympian Court: Common Law Judging Versus Error Correction in the Supreme Court*, 63 WASH. & LEE L. REV. 271, 290 (2006) (“Applying standards to a particular set of facts, however, may be as difficult or important as articulating the standard itself. But sometimes it appears that the Court does not want to be bothered to do the hard work of showing how the standard operates in application.”).

<sup>29</sup> Blum et al., *supra* note 21, at 653 (“One problem with negotiating the clearly-established-law terrain is that the Supreme Court, in earlier cases, sent mixed signals as to what is sufficient to give officials notice that certain conduct is unconstitutional.”).

<sup>30</sup> See *infra* Part II.A.

<sup>31</sup> See *infra* Part II.B.

qualified immunity doctrine without requiring any change in precedent and details where along this spectrum different courts have deemed policies to apply.

#### A. The Supreme Court's Conflicting Guidance

The Supreme Court has never conclusively defined what sources of law can be considered as clearly established law under the second prong of the qualified immunity test.<sup>32</sup> Despite the lack of clarity, it is generally accepted that Supreme Court precedent and binding in-circuit precedent constitute clearly established law.<sup>33</sup> But the Supreme Court's commentary on whether non-case-law sources—namely, departmental policies—can be considered clearly established law is sparse and conflicting.

##### 1. The Court's repudiation of policies: *Davis v. Scherer*.

The first time the Supreme Court directly addressed the use of policies in the context of qualified immunity, it rejected their inclusion in clearly established law. In *Davis v. Scherer*,<sup>34</sup> a state highway patrol employee, Gregory Scherer, applied for permission from his employer to work part-time for the sheriff's office, pursuant to a state order that patrol members seeking outside employment obtain approval from the department in order to avoid conflicts of interest.<sup>35</sup> Scherer's supervisors found that the part-time work created a conflict of interest, and after Scherer refused to quit his part-time job, his employment with the highway patrol was terminated.<sup>36</sup> Scherer sued, alleging his former employer had violated the Due Process Clause of the Fourteenth Amendment by terminating his employment without a formal pre-termination or post-termination hearing.<sup>37</sup>

The district court found in favor of Scherer on the issue of qualified immunity based on the employer's violation of its own policies. Scherer's supervisors "followed procedures contrary to the department's rules and regulations" when they terminated his employment.<sup>38</sup> According to the district court, this violation of the regulations signaled that Scherer's termination was unreasonable: "if an official violates his agency's explicit regulations, which have the force of state law, [that] is evidence that his conduct is unreasonable."<sup>39</sup> Therefore, the officials who terminated Scherer's employment were "not entitled to qualified immunity

<sup>32</sup> For example, some Supreme Court cases contain language that calls into question whether circuit court precedent even counts as clearly established law for the purpose of qualified immunity. *See, e.g.*, *Carroll v. Carman*, 574 U.S. 13, 17 (2014) ("Assuming for the sake of argument that a controlling circuit precedent could constitute clearly established federal law in these circumstances . . ."); *Reichle v. Howards*, 566 U.S. 658, 665–66 (2012) ("Assuming arguendo that controlling Court of Appeals' authority could be a dispositive source of clearly established law in the circumstances of this case . . .").

<sup>33</sup> *See, e.g.*, *Okin v. Vill. of Cornwall-on-Hudson Police Dep't*, 577 F.3d 415, 433 (2d Cir. 2009) ("We look to Supreme Court and Second Circuit precedent existing at the time of the alleged violation to determine whether the conduct violated a clearly established right."); *Wilson v. Layne*, 526 U.S. 603, 617 (1999) (stating that "cases of controlling authority in [the petitioners'] jurisdiction at the time" in question can "clearly establish[ ] the rule").

<sup>34</sup> 468 U.S. 183 (1984).

<sup>35</sup> *Id.* at 185.

<sup>36</sup> *Id.* at 185–86.

<sup>37</sup> *Id.* at 187.

<sup>38</sup> *Id.* at 188–89 (quoting *Scherer v. Davis*, 543 F. Supp. 4, 20 (N.D. Fla. 1981) (explaining that "the personnel regulations of the Florida Highway Patrol clearly required 'a complete investigation for the charge and an opportunity [for the employee] to respond in writing'" (alterations in original)).

<sup>39</sup> *Davis*, 468 U.S. at 188 (alteration in original) (quoting *Scherer*, 543 F. Supp. at 19). The regulation at issue here was adopted by the Department of Highway Safety and Motor Vehicles and signed by its Executive Director, which gave the policy the force of state law. *Scherer*, 543 F. Supp. at 7–8, 19. While in this case, the regulation conferred obligations on officials, this Comment applies more broadly and includes informal policies that do not create any binding obligations on officials who are subject to them.

because their belief in the legality of the challenged conduct was unreasonable.”<sup>40</sup> The court of appeals affirmed this decision on the basis of the district court’s reasoning.<sup>41</sup>

The Supreme Court reversed. Scherer argued that “a defendant official’s violation of a clear statute or regulation, although not itself the basis of suit, should deprive the official of qualified immunity from damages for violation of other statutory or constitutional provisions.”<sup>42</sup> The Court acknowledged that this argument was “not without some force,” but declined to adopt it.<sup>43</sup> Instead, the Court stated that “[o]fficials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision.”<sup>44</sup> The Court expressed concern that denying qualified immunity when plaintiffs show a “clear violation of a statute or regulation that advanced important interests or was designed to protect constitutional rights” would untenably expand the qualified immunity analysis.<sup>45</sup> It would give judges too much discretion to select from policies they deem relevant, increase the difficulty for officials to anticipate legal consequences for their actions, and frustrate trial courts’ ability to dismiss frivolous lawsuits.<sup>46</sup> For these reasons, the Court declined to consider the employer’s policy in its analysis and held that there was no clearly established rights violation.<sup>47</sup>

## 2. The Court’s embrace of policies: *Hope v. Pelzer*.

Despite *Davis*’s seemingly unequivocal statement barring consideration of non-case-law sources of clearly established law, the Supreme Court itself has cited policies when determining whether a right is clearly established. The most significant example of this application is *Hope v. Pelzer*.<sup>48</sup> This case concerned the Alabama Department of Corrections (ADOC) and its use of a “hitching post” as a behavioral punishment.<sup>49</sup> The plaintiff, Larry Hope, was incarcerated and traveling to the chain gang’s worksite. He fell asleep during the bus ride and was slow to get off the bus when ordered.<sup>50</sup> Words between him and a guard escalated to fighting, and other guards intervened to restrain Hope and transport him back to the prison, “where he was put on the hitching post.”<sup>51</sup> The guards left him there for seven hours in the sun with his shirt off, and he was only given water once or twice.<sup>52</sup> Hope sued the guards, arguing that they violated the Eighth Amendment’s prohibition against cruel and unusual punishment.<sup>53</sup>

The Eleventh Circuit granted the guards immunity, holding that Hope failed to meet the second prong of the qualified immunity test. Although the court found that the guards had violated the Eighth Amendment by using the hitching post for punishment, it determined that “the facts in the two precedents on which Hope primarily relied” were not “materially similar,” and therefore they were insufficient to show that the violation was clearly established.<sup>54</sup> The Supreme Court reversed. Rather than find that the precedents cited by

<sup>40</sup> *Davis*, 468 U.S. at 189 (quoting Scherer, 543 F. Supp. at 20).

<sup>41</sup> *Davis*, 468 U.S. at 189 (referencing Scherer v. Graham, 710 F.2d 838 (11th Cir. June 30, 1983)).

<sup>42</sup> *Davis*, 468 U.S. at 193.

<sup>43</sup> *Id.* at 194.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 195.

<sup>46</sup> *Id.* at 195–96.

<sup>47</sup> *Davis*, 468 U.S. at 197.

<sup>48</sup> 536 U.S. 730 (2002).

<sup>49</sup> *Id.* at 733.

<sup>50</sup> *Id.* at 734.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 734–35.

<sup>53</sup> *Hope*, 536 U.S. at 735.

<sup>54</sup> *Id.* at 736 (internal quotation marks omitted) (quoting *Hope v. Pelzer*, 240 F.3d 975, 981 (11th Cir. 2001)).

Hope were materially similar, the Court instead held that material similarity is not necessary for the law to be clearly established.<sup>55</sup> The Court stated that “officials can still be on notice that their conduct violates established law even in novel factual circumstances.”<sup>56</sup> Here, “the Eighth Amendment violation [was] obvious,” and that finding alone makes the right clearly established.<sup>57</sup>

In its reasoning, the Court also pointed to several policies as sources of clearly established law. Notwithstanding the finding of obviousness, it held that there were several other sources clearly establishing the right at issue:

[I]n light of binding Eleventh Circuit precedent, an Alabama Department of Corrections [ ] regulation, and a [Department of Justice] report informing the ADOC of the constitutional infirmity in its use of the hitching post, we readily conclude that the [guards] conduct violated “clearly established statutory or constitutional rights of which a reasonable person would have known.”<sup>58</sup>

Two years before Hope was handcuffed to the hitching post, the ADOC created a regulation authorizing the use of the hitching post in certain situations and requiring “that an activity log should be completed for each [ ] inmate [on the hitching post], detailing his responses to offers of water and bathroom breaks every 15 minutes.”<sup>59</sup> The Court noted that the guards’ lack of such log in this case “provides [ ] strong support for the conclusion that [the guards] were fully aware of the wrongful character of their conduct.”<sup>60</sup> Additionally, the Court’s holding that “‘a reasonable person would have known’ [ ] of the violation is buttressed by the fact that the DOJ specifically advised the ADOC of the unconstitutionality of its practices before the incidents in this case took place.”<sup>61</sup> Because the guards in this case had “fair and clear warning” of the wrongful nature of their conduct, the Court held that they violated clearly established law and denied their defense of qualified immunity.<sup>62</sup>

*Hope* stands for the proposition that clearly established law is not limited only to case law in which the specific facts of the case have previously been found to violate rights; rather, an officer’s conduct can be so obviously violative of rights that the officer is denied qualified immunity even without a precedential case on point.<sup>63</sup> In other words, there is an obviousness exception to the clearly established law prong of the qualified immunity test.<sup>64</sup> This

---

<sup>55</sup> *Id.* at 741 (“Although earlier cases involving ‘fundamentally similar’ facts can provide especially strong support for a conclusion that the law is clearly established, they are not necessary to such a finding. The same is true of cases with ‘materially similar’ facts.”).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 738.

<sup>58</sup> *Id.* at 741–42 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

<sup>59</sup> *Hope*, 536 U.S. at 744.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* (citing *Harlow*, 457 U.S. at 818). “[T]he DOJ advised the ADOC to cease use of the hitching post in order to meet constitutional standards.” *Id.* at 745. Notably, the Court did not require that these particular guards knew about the DOJ’s recommendations:

Although there is nothing in the record indicating that the DOJ’s views were communicated to [the guards], this exchange lends support to the view that reasonable officials in the ADOC should have realized that the use of the hitching post under the circumstances alleged by Hope violated the Eighth Amendment prohibition against cruel and unusual punishment.

*Id.*

<sup>62</sup> *Hope*, 536 U.S. at 746 (quoting *Lanier*, 520 U.S. at 271).

<sup>63</sup> *Id.* at 741.

<sup>64</sup> Benjamin S. Levine, “*Obvious Injustice*” and *Qualified Immunity: The Legacy of Hope v. Pelzer*, 68 UCLA L. REV. 842, 862 (2021). Since the Court decided *Hope*, it has given very little guidance about how exactly to apply the obviousness exception. For several years after *Hope*, “the Supreme Court [ ] appeared to retreat substantially from the decision.” *Id.* at 863. But in 2020, the Court decided *Taylor v. Riojas*, 141 S. Ct. 52, 53–54 (2020), in which it relied explicitly on *Hope*’s obviousness exception

obviousness exception means that an officer can be denied qualified immunity even in factually novel circumstances. It also provides an additional legal argument for plaintiffs to challenge qualified immunity: they can argue—either in addition to pointing to analogous case law or in the alternative—that the officer’s actions were so obviously wrong that no prior case law is necessary to have put the officer on notice that their actions were wrongful.<sup>65</sup>

*Hope* belies *Davis*’s assertion that only case law qualifies as clearly established law. *Hope* was decided after *Davis*—and did not mention *Davis* at all—but there is no indication that *Hope* overturned *Davis* or that *Davis* is no longer good law. In fact, the Court has cited *Davis* in the years since *Hope*.<sup>66</sup> While the Court has not provided a definitive answer for the role that policies should have in the second prong of the qualified immunity test, *Hope* suggests there is room in the analysis for their consideration.

## B. Discord and Disagreement in the Lower Courts

Predictably, the Supreme Court’s ambiguity concerning the use of policies as clearly established law has created confusion and inconsistency among the lower courts. There is no discernable principle controlling when courts consider policies in the qualified immunity analysis and when they reject them as irrelevant. Sometimes courts cite *Davis* or *Hope* to support their rejection<sup>67</sup> or consideration<sup>68</sup> of policies; sometimes courts reject or consider policies without any justification.<sup>69</sup> Part II.B.1 provides examples of internal inconsistency within circuits. It shows that, even within a single circuit, different cases take opposite stances on whether to consider policies in the qualified immunity analysis. Part II.B.2 discusses why courts choose to cite policies in their analyses. It suggests that courts use policies because of qualified immunity’s underlying rationale of notice: officers are more likely to be on notice of their department’s policies than on notice of case law, and judges are responding to this reality by citing information that officers realistically should have known. Although it is clear that the lower courts have taken positions on whether policies should factor into the qualified immunity analysis, they have not grappled with the rationales for these positions. The result is a fractured and unreasoned application of policies that can depend on the location of the alleged conduct or the particular panel of judges hearing the case.

---

to deny qualified immunity. Levine, *supra* at 870. Levine commented that in *Taylor*, “the Court clearly answered the question of whether *Hope* remains good law, [but] it provided little insight regarding when courts should apply it.” *Id.* at 871.

<sup>65</sup> Levine found that circuit courts follow one of two approaches to the clearly established law analysis: some circuits “default to a search for reasonably similar precedent and treat the possibility of obvious violations as something of an outlier,” while others follow a “multitrack” approach in which “the possibility of obvious violations [is] baked into . . . the clearly established analysis,” which “obligate[s] judges at minimum to acknowledge the possibility that any given case that [comes] before them could present an obvious violation.” Levine, *supra* note 64, at 899–900.

<sup>66</sup> See *Ziglar v. Abbasi*, 582 U.S. 120, 151–52 (2017) (quoting *Davis*, 468 U.S. at 195) (noting that clearly established law must be narrowly interpreted, because “[t]o subject officers to any broader liability would be to ‘disrupt the balance that our cases strike between the interests in vindication of citizens’ constitutional rights and in public officials’ effective performance of their duties’”).

<sup>67</sup> See, e.g., *Verret v. Ala. Dep’t. of Mental Health*, 511 F. Supp. 2d 1166, 1176 (M.D. Ala. 2007) (“[T]his Court will follow the binding precedent established by *Davis* and hold that [the defendant’s] violation of policy 20–16 does not forfeit her right to qualified immunity.”).

<sup>68</sup> See, e.g., *Furnace v. Sullivan*, 705 F.3d 1021, 1027–28 (9th Cir. 2013) (observing that “in *Hope*, for example, the Supreme Court looked to rules promulgated by the Alabama Department of Corrections to aid it in determining whether a prison guard was on notice of constitutional limitations on the use of force,” and therefore evaluating the prison’s policy in this case as “relevant to determining whether the officers could have thought their conduct was reasonable and lawful”).

<sup>69</sup> See, e.g., *Stamps v. Town of Framingham*, 813 F.3d 27, 42 (1st Cir. 2016) (explaining that “police officers are customarily taught not to do what [the officer] did. . . . Not only had the unreasonableness of [the officer’s] alleged conduct been clearly established as a legal matter, but it had also been well established in a manner that is actually useful to police officers” through policy and training).

### 1. Internal inconsistency.

The inconsistency in lower courts' consideration of policies cannot accurately be described as a circuit split, because there is inconsistency even within circuits. For example, the Tenth Circuit has both approved and renounced the consideration of policies in the qualified immunity analysis. In *Weigel v. Broad*,<sup>70</sup> the Tenth Circuit placed significant emphasis on officer training in a case in which Highway Patrol Officers killed Bruce Weigel by asphyxiation, restraining his hands and feet and applying pressure on his back while he was on the ground.<sup>71</sup> The Tenth Circuit held that the officers were not entitled to qualified immunity because they should have known not to restrain the decedent in that way.<sup>72</sup> The court detailed that officers were trained precisely not to do what they did to Weigel: "Numerous training materials provided to the troopers addressed the risks of putting weight on an individual's back when the person is lying on his stomach. During the troopers use-of-force training . . . they were provided with extensive written materials, oral lectures, and audiovisual presentations regarding the dangers of . . . positional asphyxiation."<sup>73</sup> The Tenth Circuit's clearly established law finding did not rely on case law at all<sup>74</sup> and was unequivocal that the department's policies alone served as clearly established law: "The defendants' training informed them that the force they used upon Mr. Weigel produced a substantial risk of death. Because it is clearly established law that deadly force cannot be used when it is unnecessary to restrain a suspect . . . defendants' unnecessary use of deadly force violated clearly established law."<sup>75</sup>

However, the Tenth Circuit's assertion in *Weigel* that police training is relevant to the qualified immunity analysis is not consistent across all its cases. In *Frasier v. Evans*,<sup>76</sup> the Tenth Circuit explicitly rejected consideration of police training as clearly established law in a case about First Amendment rights.<sup>77</sup> This case arose when Levi Frasier recorded a video of police officers using force while arresting a suspect, and the officers responded by seizing his tablet and searching for the video without his consent.<sup>78</sup> The district court found that the defendant officers "were not entitled to qualified immunity because they actually knew from their training that such a First Amendment right purportedly existed."<sup>79</sup> The Tenth Circuit reversed, unequivocally stating that the officers' training could not be considered in the analysis: "judicial decisions are the only valid interpretive source of the content of clearly established law, and, consequently, whatever training the officers received concerning the nature of Mr. Frasier's First Amendment rights was irrelevant to the clearly-established-law inquiry."<sup>80</sup> According to the Tenth Circuit in this case—and despite *Weigel*—training can never provide the basis for clearly established law.<sup>81</sup>

<sup>70</sup> 544 F.3d 1143 (10th Cir. 2008).

<sup>71</sup> *Id.* at 1148–49.

<sup>72</sup> *Id.* at 1153.

<sup>73</sup> *Id.* at 1149–50.

<sup>74</sup> Interestingly, the Tenth Circuit also discussed the facts of a similar precedential case, but not for the purpose of finding a court case that clearly established the law. Rather, the court found this precedent noteworthy because of its relation to the officers' training program: "[The prior case] turns out to be highly relevant to this case, but not for its legal teaching. Rather, the opinion was apparently the reason for the extensive [ ] training on positional asphyxia that we describe above." *Id.* at 1154.

<sup>75</sup> *Weigel*, 544 F.3d at 1155.

<sup>76</sup> 992 F.3d 1003 (10th Cir. 2021).

<sup>77</sup> *Id.* at 1015.

<sup>78</sup> *Id.* at 1008.

<sup>79</sup> *Id.* at 1015.

<sup>80</sup> *Id.*

<sup>81</sup> *Frasier*, 992 F.3d at 1019 ("[I]t is beyond peradventure that judicial decisions concretely and authoritatively define the boundaries of permissible conduct in a way that government-employer training never can. Thus, irrespective of the merits of the training that the officer defendants received concerning the First Amendment, it was irrelevant to the clearly-established-law inquiry here.").



The Tenth Circuit is not the only circuit to display internal inconsistency regarding the consideration of policies as clearly established law,<sup>82</sup> and yet, courts have not grappled with this irregularity. In none of these cases did the court distinguish or even acknowledge the discrepancy in the use of policies within the circuit. The dichotomy between *Hope* and *Davis* does not explain the disparity either: *Frasier* did not cite *Davis*, and while *Weigel* cited *Hope*, it did not mention *Hope*'s own use of policies in its reasoning.

## 2. Policies as providing realistic notice.

As a general matter, when courts do consider policies to determine whether a reasonable officer would have been on notice that their actions were wrongful, they are more likely to find that clearly established law was violated and deny qualified immunity. This may be because policies add to the collection of clearly established law, making it more likely that a court finds an analogous situation to the conduct at issue.<sup>83</sup>

When courts rely on policies to deny qualified immunity, typically they cite policies in addition to case law as clearly established law.<sup>84</sup> In these cases, courts could have denied qualified immunity without any reference to policies, but instead chose to include a discussion of relevant policies to show why officers should have known their actions were improper. For example, in *Nelson v. Correctional Medical Services*,<sup>85</sup> the Eighth Circuit denied qualified immunity to a corrections officer who shackled an incarcerated pregnant woman while she was in labor.<sup>86</sup> The Eighth Circuit found that “[the plaintiff]’s protections from being shackled during labor had thus been clearly established by decisions of the Supreme Court and the lower federal courts before [the conduct at issue]. The A[rkansas] D[e]partment of C[orrections] administrative regulations in effect also reflected the constitutional protections recognized in these judicial decisions.”<sup>87</sup> The court could have concluded that the law was clearly established merely by precedential court cases, but it instead held that policies also clearly established the law.

Much like the Eighth Circuit in *Nelson*, many courts use policies to buttress an already determined conclusion—the case would come out the same way if policies were not considered.<sup>88</sup> So why include a discussion of policies at all? The answer may lie in qualified immunity’s basis in notice. As explained above, the justification for qualified immunity is rooted in the idea that officers should be liable only when they had fair warning that their

<sup>82</sup> Compare *Nelson v. Correctional Med. Servs.*, 583 F.3d 522, 533–34 (8th Cir. 2009) (denying qualified immunity for officers who shackled an incarcerated pregnant woman in labor in violation of the prison’s regulations) with *Anderson v. City of Minneapolis*, 934 F.3d 876, 884 (8th Cir. 2019) (granting qualified immunity for first responders who failed to properly treat a person with hypothermia in violation of department regulations); *Mercado v. City of Orlando*, 407 F.3d 1152, 1160 (11th Cir. 2005) (denying qualified immunity for a police officer who violated a plaintiff’s Fourth Amendment rights by shooting him in the head with “less lethal” munitions in violation of the department’s policy) with *Knight ex rel. Kerr v. Miami-Dade Cnty.*, 856 F.3d 795, 813 (11th Cir. 2017) (granting qualified immunity to police officers who violated their pursuit policy, which led to the police shooting into the decedent’s car, wounding one person, and killing two others).

<sup>83</sup> See *Notable Findings*, INST. FOR JUST., <https://perma.cc/M39F-5PN5> (“The larger the federal circuit population, the easier it is to overcome qualified immunity. That’s because larger circuits have more cases; more cases result in more SOCELS [Statements of Clearly Established Law]; and more SOCELS provide more opportunities to overcome qualified immunity.”).

<sup>84</sup> This is much like the Supreme Court’s opinion in *Hope*: “Even if there might once have been a question regarding the constitutionality of this practice, [circuit precedent] as well as the DOJ report condemning the practice, put a reasonable officer on notice that the use of the hitching post under the circumstances alleged by *Hope* was unlawful.” *Hope*, 536 U.S. at 745–46.

<sup>85</sup> 583 F.3d 522 (8th Cir. 2009).

<sup>86</sup> *Id.* at 533–34.

<sup>87</sup> *Id.* at 533; see also *id.* (“Since these rules were in effect when [the officer] was hired, trained, and retrained and remained in effect when she accompanied [the plaintiff] to the hospital, her knowledge of them is presumed and they applied to her decisions and actions.”).

<sup>88</sup> See, e.g., *Stamps*, 813 F.3d at 42 (denying qualified immunity to a police officer who accidentally shot and killed an unarmed and nonthreatening man during the execution of a search warrant because both precedent and policies clearly established the constitutional violation).

conduct was unlawful.<sup>89</sup> The clearly established prong of the test is meant to protect officers when they could not have known of the illegality of their conduct.<sup>90</sup> However, relying on case law as clearly established law assumes that case law actually provides notice to police officers. Empirically, this assumption is false: Professor Joanna Schwartz found that police officers are not taught the holdings of cases or trained based on what the courts find constitutes clearly established law.<sup>91</sup> And even if there were efforts to regularly inform officers of developments in case law, Professor Schwartz points out that “[t]here could never be sufficient time to train officers about all the court cases that might clearly establish the law for qualified immunity purposes,” and regardless, officers would be extremely unlikely to actually recall those court decisions at the moment they take action.<sup>92</sup> In this sense, qualified immunity is based on a legal fiction: it is designed to protect only officers who could not have known that their conduct violated case law, while assuming those officers actually are informed about that case law.

It is possible that courts cite policies in addition to case law as a means of rectifying this legal fiction at the heart of qualified immunity. While courts can deny qualified immunity based on case law alone, they sometimes choose to additionally confirm that a reasonable officer in the defendant’s position would have *actually* been on notice that their conduct was unlawful because their own department’s policies advised them not to take those actions. When an officer is explicitly trained not to put weight on a person’s back while they are handcuffed on the ground to prevent unnecessary deaths, and the officer violates those policies while killing a person,<sup>93</sup> the court can confidently state that a reasonable officer in their position would have been on notice of the clearly established law they violated.<sup>94</sup> The black-letter qualified immunity doctrine does not require such analysis, but it satisfies the original justifications of the doctrine to ensure that a reasonable officer would have had actual notice of the clearly established law. As the First Circuit put it, policies can clearly establish law “in a manner that is actually useful.”<sup>95</sup>

On the other side, judicial disregard of policies that inform officers of potential constitutional violations creates a qualified immunity paradox: courts are granting immunity to officers who actually knew their actions violated rights based on the legal fiction that those officers would not have known of case law determining their actions violated rights. Without on-point precedent, if an officer’s own department policies explain that an action would violate the law—and the officer performs that action anyway—the officer is entitled to qualified immunity because they were not on notice that their actions would violate “clearly established law.” The doctrine’s reliance on an objective reasonable officer is the reverse of reality: this “reasonable officer” is assumed to have encyclopedic knowledge of all their circuit’s qualified immunity case law but does not know their own department’s policies.

This paradox was on display in the case of the officers who forcibly took Frasier’s tablet to delete a video without his consent, which the officers were told in training was a First Amendment violation.<sup>96</sup> The court said that the officers’ actual knowledge of the illegality of

<sup>89</sup> See *supra* Part I.

<sup>90</sup> *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

<sup>91</sup> Joanna C. Schwartz, *Qualified Immunity’s Boldest Lie*, 88 U. CHI. L. REV. 605, 672–73 (2021) [hereinafter Schwartz, *Qualified Immunity’s Boldest Lie*].

<sup>92</sup> *Id.*

<sup>93</sup> *Weigel*, 544 F.3d at 1150.

<sup>94</sup> Often, when policies are used to bolster denials of qualified immunity that can be reached only by citing case law, the facts are particularly egregious. From a legal realist perspective, it is possible that judges are also citing departmental policies in these cases to support their intuition that these plaintiffs should get their days in court.

<sup>95</sup> *Stamps*, 813 F.3d at 42.

<sup>96</sup> *Frasier*, 992 F.3d at 1011–12.

their actions was not enough to deny them qualified immunity: “even if the officers subjectively knew—based on their training or from municipal policies—that their conduct violated Mr. Frasier’s First Amendment rights,” they were still entitled to qualified immunity because the fictional reasonable officer who gets information about constitutional rights from case law could not have known that such actions would violate Frasier’s rights.<sup>97</sup> If qualified immunity is meant to protect “all but the plainly incompetent or those who knowingly violate the law,”<sup>98</sup> why should an officer with actual notice of the illegality of their actions still get immunity?

### III. INCORPORATING POLICIES AS CLEARLY ESTABLISHED LAW

Departmental policies currently occupy a problematic gap in the qualified immunity doctrine. Because of the absence of a clear statement from the Supreme Court about the applicability of policies as clearly established law, lower court consideration of policies has been inconsistent and arbitrary. This lack of uniformity has troubling theoretical implications. Qualified immunity relies on a theory of notice, so it is doctrinally inconsistent that officers who are sued for their actions cannot reliably know whether their department’s policies will play a role in the determination of their immunity.

This Part discusses how and to what extent departmental policies should be considered in the qualified immunity analysis. \* \* \* Finally, Part III.D presents a middle-ground solution that considers policies as an objective factor in the obviousness analysis. This solution situates policies as having a limited role that assists judges in determining when conduct obviously violates clearly established law.

#### A. Pragmatic Implications of Considering Policies

\* \* \*

#### B. Within the Spectrum that Precedent Allows: From *Hope* to *Davis*

\* \* \*

#### C. Which Policies Apply

\* \* \*

#### D. Policies As an Objective Factor in Judging Obviousness

A measured way to standardize the use of policies in the qualified immunity analysis is to allow for their consideration in a limited capacity to facilitate the finding of clearly established law for cases in which there is not already on-point case law. The Supreme Court has established two methods for fulfilling the second prong of the qualified immunity test: on-point case law or a finding that the violation was obvious.<sup>99</sup> Of the two, the obviousness method stands out as more ambiguous.<sup>100</sup> The use of policies in order to bolster a finding of clearly established law by in-circuit precedent may provide an alternative to relying on the legal fiction at the heart of the clearly established law inquiry, but it is largely symbolic. In

<sup>97</sup> *Id.* at 1019.

<sup>98</sup> *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

<sup>99</sup> See *supra* Part II.A.2.

<sup>100</sup> Richard B. Golden & Joseph L. Hubbard, Jr., *Section 1983 Qualified Immunity Defense: Hope’s Legacy, Neither Clear nor Established*, 29 AM. J. TRIAL ADVOC. 563, 584 (2006) (explaining that “*Hope* applied a hopelessly ambiguous fair warning standard” to the qualified immunity test).

contrast, policies can play a functional role in cases of obviousness by inserting greater objectivity into the analysis.

Although *Hope* addressed a problematic loophole in the qualified immunity doctrine by introducing the obviousness exception, it created its own challenges. Prior to *Hope*, if an officer committed a constitutional violation in a creative or especially egregious way, they would be entitled to qualified immunity because of the lack of any factually analogous precedent in the case law.<sup>101</sup> *Hope* ensured that escalating the atrocity of the constitutional violation would not raise the probability of immunity in court. However, some criticized *Hope* for departing from the justifications for qualified immunity by undermining the requirement of notice.<sup>102</sup> Obviousness is in the eye of the beholder, and the Court did not offer any guidance on how to define obviousness. In the absence of a clearly articulated standard, *Hope*'s obviousness test "amounts to the equivalent of Justice Stewart's 'I know it when I see it.'"<sup>103</sup>

Considering departmental policies in the obviousness analysis mitigates these criticisms. First, as discussed at length above, relying on policies substantially increases the likelihood that officers will have actual notice of conduct that will likely violate constitutional rights. This addresses the concern that the obviousness test is entirely retrospective and that it eradicates the fair notice upon which qualified immunity is justified. In fact, this approach improves upon qualified immunity's basis in fair notice because officers are more likely to be on notice about their policies than they are about case law.<sup>104</sup>

Second, it brings objectivity to the obviousness analysis. Judges' freedom to determine obviousness however they see fit and apply that determination retrospectively to cold facts creates "a situation where it is the judge's emotional reaction to the facts that determines whether a claim will be successful."<sup>105</sup> Policies offer a factually informed and democratically instituted position on what a reasonable officer should do in a particular situation.<sup>106</sup> Rather than relying on a judge to decide with the benefit of hindsight what a reasonable officer would obviously have done, a judge could instead look to policies created prospectively to determine how a reasonable officer would have acted. In other words, courts could rely on what officers' own departments believe are lawful and proper actions for their officers to take. Considering policies as a benchmark for obviousness constrains judges' subjective opinions with prospective information on how officers should act.

The consideration of policies would not replace other indicators of obviousness that courts sometimes use, such as general constitutional principles,<sup>107</sup> but provide an additional objective factor. Cases that are so clearly obvious that there would never be a written policy forbidding the action would still be resolved under the *Hope* doctrine—when the obviousness is so apparent, a policy is not needed.<sup>108</sup> Rather, this approach is informative for determining

<sup>101</sup> See Levine, *supra* note 64, at 908 (emphasizing that qualified immunity denials based on obviousness "are indicative of judges recognizing the untenability of requiring relevant precedent in circumstances when the injustice present in a case is palpable" and stating that those denials "overwhelmingly have been decided that way for good reason, [because] a grant of qualified immunity in these cases would truly be unjust . . . a deep social harm would be done by the dismissal of these § 1983 actions on the basis of a technicality").

<sup>102</sup> Allen H. Denson, *Neither Clear nor Established: The Problem with Objective Legal Reasonableness*, 59 ALA. L. REV. 747, 761 (2008) ("The state of the law is less certain when many cases will turn on whether a particular conclusion seems 'obvious' to a judge or not.").

<sup>103</sup> Golden & Hubbard, *supra* note 100, at 584 (quoting *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring)).

<sup>104</sup> Schwartz, *Qualified Immunity's Boldest Lie*, *supra* note 91, at 672–73.

<sup>105</sup> Denson, *supra* note 102, at 761–62.

<sup>106</sup> See *supra* Part III.A.

<sup>107</sup> Golden & Hubbard, *supra* note 100, at 585 (explaining that after *Hope*, "notice may depend on more generalized notions of constitutional rights that are not tied to specific circumstances but that emanate from the text of the Constitution itself").

<sup>108</sup> See, e.g., *K.H. ex rel. Murphy v. Morgan*, 914 F.2d 846, 851 (7th Cir. 1990) ("There has never been a [S]ection 1983 case accusing welfare officials of selling foster children into slavery; it does not follow that if such a case arose, the officials would be immune from damages liability because no previous case had found liability in those circumstances.").

edge cases within the obviousness exception. When judges reasonably disagree over whether an action was obviously unconstitutional, the existence of a prospective policy that is written by those with expertise on proper officer conduct and that prohibits the action serves as an objective indicator that the action was, in fact, obviously wrong. Rather than relying on a judge's instinct for what obviousness means, the consideration of policies inserts objectivity into these edge cases.

Additionally, it is especially important to consider policies in obviousness cases. When there is a specific policy on the books that prohibits an action, it is logically less likely that an officer will commit that conduct. Because officers are less likely to act in ways that violate their policies, it is less likely that there will be a prior case that clearly establishes those actions as constitutional violations. In other words, "[t]he easiest cases don't even arise."<sup>109</sup> Since there is a lack of case law addressing actions that policies prohibit, it is especially important to refer to a different source of clearly established law. In this way, policies provide a signaling function (by showing that actions prohibited by policies are obvious) and an accountability function (by ensuring that officers who commit those actions in spite of their own policies are not more likely to be granted immunity).

The Ninth Circuit essentially adopted this approach when it reversed the district court's grant of qualified immunity in *Drummond*.<sup>110</sup> Recall that Drummond was a mentally ill man who fell into a permanent vegetative state after officers restrained him and knelt on his back for upward of twenty minutes.<sup>111</sup> There was considerable evidence that the officers should have known their actions would violate his rights, including the fact that "the officers received training from their *own police department*" warning against putting pressure on a person's back or neck to restrain them.<sup>112</sup> The Ninth Circuit did not point to case law to hold that a clearly established right was violated in this case.<sup>113</sup> Instead, the Ninth Circuit said this violation was obvious and cited *Hope* as the reason to deny qualified immunity.<sup>114</sup> Although not stated explicitly, the policies that the officers violated served as an objective indication that the rights violation was indeed obvious. Because a reasonable officer in the defendants' position would have been on notice of and followed their own department's policies, these officers committed an obvious rights violation and were rightfully denied qualified immunity.

### CONCLUSION

Qualified immunity no longer resembles the good faith defense to liability that the Supreme Court first created a half-century ago. In *Davis*, the Supreme Court acknowledged the logic that officers who do not act in accordance with their department's applicable regulations should not be immune from liability,<sup>115</sup> but the Court chose not to incorporate policies in the qualified immunity analysis because "once the door is opened to such inquiries, it is difficult to limit their scope in any principled manner."<sup>116</sup> This Comment provides that

<sup>109</sup> *United States v. Lanier*, 520 U.S. 259, 271 (1997).

<sup>110</sup> *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d 1052, 1054 (9th Cir. 2003).

<sup>111</sup> *Id.* at 1054–55.

<sup>112</sup> *Id.* at 1061–62 (emphasis in original).

<sup>113</sup> *See id.* at 1062.

We need no federal case directly on point to establish that kneeling on the back and neck of a compliant detainee, and pressing the weight of two officers' bodies on him even after he complained that he was choking and in need of air violates clearly established law, and that reasonable officers would have been aware that such was the case.

<sup>114</sup> *Id.* at 1061.

<sup>115</sup> *Davis v. Scherer*, 468 U.S. 183, 195 (1984) ("[I]t is an appealing proposition that the violation of such provisions is a circumstance relevant to the official's claim of qualified immunity.").

<sup>116</sup> *Id.*

principled manner. It shows that policies can be incorporated into qualified immunity's clearly established law analysis in a way that clarifies *Hope*'s obviousness test and provides actual notice to officers prior to litigation. This both aligns the doctrine with its underlying purpose and provides a greater likelihood of accountability for individuals whose rights were violated by officers who should have known better.

**Applicant Details**

First Name **Thomas**  
Middle Initial **E**  
Last Name **Floyd**  
Citizenship Status **U. S. Citizen**  
Email Address [tefloyd@wm.edu](mailto:tefloyd@wm.edu)  
Address

**Address**

Street  
**1711 Hanover Ave., Apt 4**  
City  
**Richmond**  
State/Territory  
**Virginia**  
Zip  
**23220**  
Country  
**United States**

Contact Phone Number **8048148266**

**Applicant Education**

BA/BS From **University of Virginia**  
Date of BA/BS **December 2011**  
JD/LLB From **William & Mary Law School**  
<http://law.wm.edu>  
Date of JD/LLB **May 18, 2024**  
Class Rank **5%**  
Law Review/Journal **Yes**  
Journal(s) **William & Mary Law Review**  
Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/Externships **Yes**  
Post-graduate Judicial Law Clerk **No**

## Specialized Work Experience

### Recommenders

Combs, Nancy  
ncombs@wm.edu  
757-221-3830

Franklin, Jennifer R.  
jrfranklin@wm.edu  
757-221-2488

Haeberle, Kevin Scott  
kshaeberle@wm.edu  
757-221-1475

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**



Thomas Floyd  
1711 Hanover Avenue, Apt. #4  
Richmond, Virginia 23220  
(804) 814-8266  
tefloyd@wm.edu

May 30, 2023

The Honorable Jamar K. Walker  
United States District Court for the Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, Virginia 23510

Dear Judge Walker:

I am a rising third-year student at William & Mary Law School, graduating in May 2024, and I am writing to apply for a judicial clerkship in your chambers for the 2024-2025 term. Ranked first in my class, I am a Lead Articles Editor of the *William & Mary Law Review* and a member of the school's National Trial Team. I am a Virginia native, and I am very interested in clerking for you because of my experience as a Summer 2022 judicial intern in the Eastern District's Richmond courthouse.

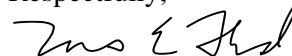
That experience confirmed my desire to clerk, and I have since pursued additional experiences to prepare me to excel as a judicial clerk. For my second-year writing class, I wrote a brief in defense of a student's Free Exercise claim against her school district. My student Note, forthcoming in the *William & Mary Law Review*, explores the interplay between the Federal Arbitration Act and the First Amendment in disputes over agreements to religious arbitration.

Furthermore, my other professional experiences developed skills that I will use as a clerk. Before attending law school, I was a high school Spanish teacher for Richmond Public Schools, where I worked within deadlines and juggled agendas. As a Spanish teacher, much of my grading consisted of analyzing minute details in student work for accuracy. The organizational skills and attention to detail that I first honed as a teacher will help me succeed as a clerk.

Enclosed for your consideration are my resume, law school transcript, and writing sample. Accompanying my application are letters of recommendation from Professors Nancy Combs, Jennifer Franklin, and Kevin Haeberle.

Thank you for your consideration. I would value the opportunity to discuss my candidacy for a clerkship in your chambers in an interview. I look forward to hearing from you.

Respectfully,



Thomas Eugene Floyd

**THOMAS FLOYD**

1711 Hanover Avenue, Apt. #4 | Richmond, Virginia 23220 | (804) 814-8266 | tefloyd@wm.edu

**EDUCATION***William & Mary Law School*, Williamsburg, Virginia

J.D. expected, May 2024

G.P.A.: 3.9, Class Rank: 1/175 (tied)

Honors: *William & Mary Law Review*, Lead Articles Editor, Vol. 65  
 National Trial Team  
 CALI Award (highest grade in the class), Criminal Law and Civil Procedure (Fall 2021),  
 Evidence (Fall 2022), Broker-Dealer & Exchange Regulation (Spring 2023)

Activities: Teaching Assistant, Criminal Law (Prof. Nancy Combs), Fall 2022 and Fall 2023  
 International Law Society

*University of Virginia*, Charlottesville, Virginia

B.A., with Distinction, Spanish, December 2011

G.P.A.: 3.66

Honors: Echols Scholar (awarded for academic excellence and leadership)  
Activities: Resident Advisor, Upper-class Housing (2009-2010 and 2010-2011)  
Study Abroad: UVA in Valencia, Valencia, Spain, Fall 2011

**EXPERIENCE***Davis Polk & Wardwell LLP*, New York, New YorkSummer Associate

May to July 2023

Researching and writing memoranda on issues relating to a claim of bad faith conduct by corporate directors and a dispute over board composition. Evaluating bank documents in Spanish and English for an anti-money laundering investigation. Coordinating an asylum application for a human rights activist. Completing a four-week rotation in the firm's Madrid office.

*The Honorable John A. Gibney, Jr., Senior U.S. District Judge**United States District Court for the Eastern District of Virginia*, Richmond, VirginiaJudicial Intern

May to July 2022

Researched and drafted orders resolving procedural motions in civil actions including civil rights claims, an admiralty limitation of liability claim, and a subrogation claim under state law. Prepared bench memoranda based on research and review of briefs for motion hearings in discovery disputes. Analyzed position papers and presentence investigation reports to create memoranda for the Court's use at sentencing hearings.

*Richmond Public Schools*, Richmond, VirginiaSpanish Teacher – Armstrong High School

August 2016 to June 2021

Taught Spanish 2-4 and AP Spanish at a Title I, urban high school. Recognized consistently for creative instructional delivery. Mentored three first-year teachers on classroom management, student dispute resolution, and instructional planning.

**PUBLICATION***Playing the Unfair Game: Apostates, Abuse, and Religious Arbitration*, Wm. & Mary L. Rev (forthcoming 2023)

Assesses how the Church of Scientology's religious arbitration contracts exploit an unintended synergy between the Federal Arbitration Act and the First Amendment to avoid judicial review.

**COMMUNITY SERVICE, LANGUAGE SKILLS, AND INTERESTS***Eagle Scout, Assistant Scoutmaster*, Boy Scouts of America, Richmond, Virginia (2002-Present)

Fluent in Spanish. Interests include distance running, guitar, and gardening.



## Unofficial Transcript

### Note to Employers from the Office of Career Services regarding Grade Point Averages and Class Ranks:

- Transcripts report student GPAs to the nearest hundredth. **Official GPAs are rounded to the nearest tenth and class ranks are based on GPAs rounded to the nearest tenth.** We encourage employers to use official Law School GPAs rounded to the nearest tenth when evaluating grades.
- Students are ranked initially at the conclusion of one full year of legal study. Thereafter, they are ranked only at the conclusion of the fall and spring terms. William & Mary does not have pre-determined GPA cutoffs that correspond to specific ranks.
- Ranks can vary by semester and class, depending on a variety of factors including the distribution of grades within the curve established by the Law School. Students holding a GPA of 3.6 or higher will receive a numerical rank. All ranks of 3.5 and lower will be reflected as a percentage. The majority of the class will receive a percentage rather than individual class rank. In either case, it is likely that multiple students will share the same rank. Students with a numerical rank who share the same rank with other students are notified that they share this rank. Historically, students with a rounded cumulative GPA of 3.5 and above have usually received a percentage calculation that falls in the top 1/3 of a class.
- Please also note that transcripts may not look the same from student-to-student; some individuals may have used this Law School template to provide their grades, while others may have used a version from the College's online system.

<b>Transcript Data</b>						
<b>STUDENT INFORMATION</b>						
<b>Name :</b> Thomas E. Floyd						
<b>Curriculum Information</b>						
<b>Current Program</b>						
Juris Doctor						
<b>College:</b> School of Law						
<b>Major and Department:</b> Law, Law						
***Transcript type:WEB is NOT Official ***						
<b>DEGREES AWARDED</b>						
<b>Sought:</b> Juris Doctor <b>Degree Date:</b>						
<b>Curriculum Information</b>						
<b>Primary Degree</b>						
<b>College:</b> School of Law						
<b>Major:</b> Law						
	<b>Attempt Hours</b>	<b>Passed Hours</b>	<b>Earned Hours</b>	<b>GPA Hours</b>	<b>Quality Points</b>	<b>GPA</b>
<b>Institution:</b>	15.000	15.000	15.000	13.000	52.00	3.90

INSTITUTION CREDIT <a href="#">-Top-</a>							
<b>Term: Fall 2021</b>							
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	101	LW	Criminal Law	A	4.000	16.00	
LAW	102	LW	Civil Procedure	A+	4.000	17.20	
LAW	107	LW	Torts	A-	4.000	14.80	
LAW	130	LW	Legal Research & Writing I	A-	2.000	7.40	
LAW	131	LW	Lawyering Skills I	H	1.000	0.00	
				Attempt Hours	Passed Hours	Earned Hours	GPA
<b>Current Term:</b>				15.000	15.000	15.000	3.95
<b>Cumulative:</b>				15.000	15.000	15.000	3.95
Unofficial Transcript							
<b>Term: Spring 2022</b>							
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	108	LW	Property	B+	4.000	13.20	
LAW	109	LW	Constitutional Law	A	4.000	16.00	
LAW	110	LW	Contracts	A-	4.000	14.80	
LAW	132	LW	Legal Research & Writing II	A-	2.000	7.40	
LAW	133	LW	Lawyering Skills II	H	2.000	0.00	
				Attempt Hours	Passed Hours	Earned Hours	GPA
<b>Current Term:</b>				16.000	16.000	16.000	3.67
<b>Cumulative:</b>				31.000	31.000	31.000	3.81
Unofficial Transcript							
<b>Term: Fall 2022</b>							
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	115	LW	Professional Responsibility	A-	2.000	7.40	
LAW	140A	LW	Adv Writing&Practice:Appellate	A	2.000	8.00	
LAW	309	LW	Evidence	A+	3.000	12.90	
LAW	320	LW	Business Associations	A	4.000	16.00	
LAW	720	LW	Trial Advocacy-Nat'l Trial Tm	P	3.000	0.00	
LAW	760	LW	Wm & Mary Law Review	P	1.000	0.00	
				Attempt Hours	Passed Hours	Earned Hours	GPA
<b>Current Term:</b>				15.000	15.000	15.000	4.02
<b>Cumulative:</b>				46.000	46.000	46.000	3.87
Unofficial Transcript							